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Report of the Special Rapporteur on the human rights to safe drinking water and sanitation

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the human rights to safe drinking water and sanitation, prepared pursuant to Council resolutions 27/7 of 2014 and 33/10 of 2016. The focus of the report is service regulation and its role in the progressive realization of the human rights to water and sanitation. The Special Rapporteur begins the report by outlining the human rights obligations of States, regulatory actors and service providers in the context of service regulation. He provides an overview of the role of regulation in water and sanitation services, identifies different types of regulatory frameworks and discusses how they relate to the human rights standards. He discusses the core functions of regulatory actors. Finally, he presents recommendations to States and regulatory actors regarding these issues.

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Report of the Special Rapporteur on the human rights to safe drinking water and sanitation

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I. Introduction

1. Pursuant to Human Rights Council resolutions 27/7 of 2014 and 33/10 of 2016, the Special Rapporteur on the human rights to safe drinking water and sanitation, Léo Heller, was mandated to work on identifying challenges and obstacles to the full realization of those rights, as well as protection gaps, good practices and enabling factors. The subject of the present report is the regulation of water and sanitation services in the context of realization of human rights and the report aims to discuss the essential role that regulatory frameworks can play in the implementation of these human rights at the national level. In this respect, it outlines the legal obligations and responsibilities of States, regulatory actors and service providers in progressively realizing the human rights to safe drinking water and sanitation through regulatory frameworks.

2. As part of the consultation process, the Special Rapporteur invited States and non-State actors to contribute their views and perspectives in writing, through a questionnaire. A total of 43 submissions were received.[1] Eighteen submissions were received from States, and 25 submissions were received from non-State actors including civil society organizations, private service providers, academia and international organizations. Furthermore, in order to collect the views of other stakeholders, the Special Rapporteur convened an expert consultation which was held on 22 and 23 May 2017 in Rio de Janeiro, Brazil.

3. The incorporation of the human rights to water and sanitation into national legal frameworks can be done at different levels and using different instruments, including the constitution, legislation, policies and regulations. States have an immediate and legally binding obligation to take deliberate, concrete and targeted steps to the maximum of their available resources to achieve progressively the full realization of these human rights (see art. 2 of the International Covenant on Economic, Social and Cultural Rights). This includes the obligation to adopt legislative measures, as explicitly stipulated in the Covenant, and the obligation to take steps to establish regulatory frameworks informed by the standards and principles that underpin those rights.

4. When the terms "regulatory framework" or "regulation" (in general) are used in the report, they refer to secondary legislation such as norms, rules or standards establishing how services should be provided in a given context and the institutions responsible for monitoring compliance with these norms and standards. The terms "regulatory body", "regulatory authority" or "regulator" refer to a separate body to which the State delegates regulatory functions. These bodies are often responsible for setting standards and applying and enforcing them. The term "regulatory actors" is used in a broad sense, and includes government institutions that exercise regulatory functions (i.e. a department within a ministry) and separate bodies created by the State to carry out regulatory functions.

5. The number of States with a regulatory framework for water and sanitation services is increasing and so is the contingent of regulatory actors. However, there is no universal regulatory model. Regulation should be adapted to local circumstances, needs and challenges. International human rights law does not prescribe a particular choice of regulatory framework. What is essential from a human rights perspective is that those carrying out regulatory functions be immune to pressures from any illegitimate interests and that the main objectives of regulation be aligned with the human rights to drinking water and sanitation.

[1] See www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/ServiceRegulation.aspx.

II. Human rights obligations and responsibilities

A. Obligations of States

6. The State is the primary duty bearer for the realization of the human rights to water and sanitation. While the International Covenant on Economic, Social and Cultural Rights, in article 2, provides for progressive realization and acknowledges the constraints due to limits of available resources, it also imposes on States various obligations of immediate effect. In the context of service regulation, the obligations under article 2 include: (a) the obligation to take deliberate, concrete and targeted steps to put in place a regulatory framework for water and sanitation service provision that is aligned with human rights; and (b) the obligation to ensure that the rules and regulations set and the activities of those exercising regulatory functions contribute to the enjoyment of the human rights to water and sanitation without discrimination of any kind. For example, the exercise of the human rights to water and sanitation should not be conditional on, or determined by, a person's place of residence (e.g. whether a person lives or is registered in an urban or a rural area, or in a formal or an informal settlement).[2] The State's failure to take the necessary regulatory measures in order to adequately prevent and remedy discriminatory conduct either by service providers or by regulatory actors constitutes a violation of the State's obligations under the International Covenant on Economic, Social and Cultural Rights.

7. The human rights obligations of States are classified as obligations to respect, to protect and to fulfil. The obligation to respect requires that States' regulatory frameworks refrain from interfering directly or indirectly with people's existing access to water and sanitation. To that end, States must ensure that their regulatory framework prohibits disconnections from water and sanitation services due to users' inability to pay, as it is a retrogressive measure and violates the human rights to water and sanitation,[3] must ensure, when extending piped networks to informal settlements, that these services are affordable so as not to interfere with people's access, and must avoid discriminatory or unaffordable increases in the price of water and sanitation services due to inadequate regulation. Furthermore, preparedness for situations of armed conflict, emergency situations, natural disasters and effects of climate change requires that States embrace in their regulatory frameworks the obligations relevant to water and sanitation provision pursuant to international humanitarian law.

8. The obligation to protect requires States to prevent third parties from interfering in any way with the enjoyment of the human rights to water and sanitation by establishing an effective regulatory system, which includes independent monitoring, genuine public participation and imposition of penalties for non-compliance.[4] In cases in which the provision of water and sanitation services is delegated to third parties, the State has the obligation to regulate the activities of those institutions to ensure that all aspects of human rights are guaranteed (see A/HRC/33/49/Add.2). Establishing an effective regulatory framework comprises the obligations to set service standards in line with the normative content of the human rights to water and sanitation, and to create public authorities to carry out regulatory functions independently.

9. Failures to protect the rights to water and sanitation in the context of service provision usually stem from a lack of regulation or lack of enforcement of such regulation. They may also be the result of negotiating service contracts or performance agreements that fail to protect users' rights. When the provision of services is regulated by contract, States must ensure that the relevant human rights standards and principles are addressed in the

[2] See Committee on Economic, Social and Cultural Rights general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, para. 34.

[3] See Committee on Economic, Social and Cultural Rights general comment No. 15 (2003) on the right to water, para. 44 (b).

[4] Ibid., para. 24.

contract, but also that State obligations are transferred, as appropriate, to the service providers.[5]

10. Violations of the obligation to protect may occur when States fail to effectively regulate and control service providers in relation to safety, quantity or disconnections; fail to regulate pricing to ensure that services are affordable for everyone; fail to prevent discrimination by non-State actors; do not ensure that service providers extend services to marginalized households or communities; or fail to ensure that monitoring and complaints procedures are in place (see A/HRC/27/55, para. 27).

11. The obligation to fulfil has three components: the obligation to facilitate, the obligation to promote and the obligation to provide. The obligation to facilitate requires States to take positive regulatory measures to create an enabling environment for service providers to respect the human rights to water and sanitation as well as to contribute towards the full realization of these rights. Facilitating measures include not only according recognition of these rights within national policies and legal frameworks and adopting national strategies and plans of actions to realize them, but also setting service standards for service providers to comply with, in line with the normative content of the human rights to water and sanitation, monitoring service providers' compliance with the established standards, and exercising regulatory functions, directly or through a separate body. For example, where, due to a lack of regulation, access to water and sanitation facilities is either not available or inadequate in public buildings, such as schools, prisons or hospitals, or where people living in informal settlements are left with no option but to resort to unregulated informal services, the State is in breach of its obligation to facilitate.

12. The obligation to promote requires States to provide information and guidance for service providers and the population on how to comply with the standards, norms and regulations set. This obligation also entails informing and training regulatory actors on the practical implications of the human rights to water and sanitation in their area of work.

13. The obligation to provide obliges States to fulfil the rights to water and sanitation when individuals are unable, for reasons beyond their control, to realize these rights themselves by the means at their disposal. In this respect, it is crucial that the State sets specific regulations for the provision of services, inter alia, to homeless people, to poor nomadic communities, and to victims of situations of armed conflict, emergencies, natural disasters or climate change effects.

14. Violations of the obligation to fulfil include the State's failure to take steps to establish a regulatory framework in line with human rights standards, and the failure to ensure, through its regulatory framework, that the minimum essential level of water and sanitation services is enjoyed by everyone.

B. Obligations of regulatory actors

15. The human rights to water and sanitation are binding on the State as a whole. All public or governmental authorities, or separate State bodies exercising regulatory functions at national, regional or local levels, have the responsibility to realize the State's human rights obligations. To that end, regulatory actors must ensure that their policies, procedures and activities are compliant with the State's international human rights obligations in relation to the rights to water and sanitation. Their obligations also include ensuring human rights compliance by the municipalities and other entities that they regulate (see A/HRC/36/45/Add.1, para. 31).

16. In their key areas of action, which include standard-setting, monitoring and ensuring accountability for service provision, regulatory actors are bound by the principle of

[5] See a checklist for government authorities of the human rights to water and sanitation issues that need to be addressed in negotiations over any contract, concession or licensing document, from the government perspective, in *Realising the Human Rights to Water and Sanitation: A Handbook by the UN Special Rapporteur* (booklet 8: checklists), available from http://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/Handbook.aspx.

progressive realization, but also by the immediate obligation of non-discrimination and the obligation to take steps towards the full realization of these rights. The Committee on Economic, Social and Cultural Rights underscores that the enjoyment of the human rights to water and sanitation without discrimination of any kind can be compromised not only through direct action or omission by States, but also through State institutions or agencies at the national and local levels, which includes regulatory actors.[6] For regulatory actors to meet their immediate obligations of equality and non-discrimination, they must, when regulating tariffs, consider those who do not have the economic ability to pay for services, and implement mechanisms for their protection; they must also ensure that service providers deliver services to poorer neighbourhoods and informal settlements.

17. While the existence of national policies and strategies supported by the human rights to water and sanitation contributes greatly to the creation of an enabling regulatory environment, regulatory actors cannot simply dismiss their human rights obligations on the grounds that national policies are inadequate. Being at the interface between policymakers, service providers and users, and as guarantors of accountability, regulatory actors are best placed to assess whether water and sanitation standards are being progressively met or are being overlooked. They have also the primary role in identifying retrogressions in the realization of the rights and in requiring providers to address the root causes of these violations. As such, their obligation to monitor service providers' compliance with the standards of the human rights to water and sanitation and to identify what is compromising the realization of these rights goes far beyond mere policing. It involves, for example, supporting and influencing investment decisions, and policy and legislative changes in line with the human rights framework.

18. The International Water Association's Lisbon Charter, on public policy and regulation for drinking water supply, sanitation and wastewater management services, adopted by 85 Governments in 2015, asserts that the actions of regulatory actors "must be based on the principles of competence, professionalism, impartiality, accountability and transparency" (art. 4). From a human rights perspective, there are additional key principles that must guide regulatory intervention in all circumstances: the principles of equality and non-discrimination; active, free and meaningful participation; access to information; and sustainability. These overarching principles should not only guide national policies on water and sanitation but also be embedded in legal and regulatory frameworks binding all water and sanitation stakeholders, including regulatory actors.

19. Access to information is crucial to the work of regulatory actors, who have an obligation to collect, analyse and disseminate accurate and disaggregated information on the implementation of the rights to water and sanitation by the service providers that they regulate. Access to information is essential for enabling meaningful participation. In this context, it is important to highlight that regulatory actors' obligation to ensure meaningful public participation in key regulatory decisions, including tariff-setting, is not in any way incompatible with their required independence.

C. Responsibilities of service providers

20. All service providers, whether public, State-owned or private, must comply with the State's legal and regulatory framework. In cases where the State is the service provider, at central level or often through its municipalities, it must act in compliance with the laws and regulations of the State and in line with its international human rights obligations. Where service provision is formally delegated by the State to non-State actors, the State cannot exempt itself from its human rights obligations and retains the obligation to regulate and monitor their activities. Non-State service providers (formal and informal), on the other hand, have human rights responsibilities, which include complying with the national regulatory framework and respecting the human rights to water and sanitation.[7]

[6] See Committee on Economic, Social and Cultural Rights general comment No. 20, para. 14.

[7] See the Guiding Principles on Business and Human Rights.

21. At a very minimum, State-owned companies have the same responsibilities as other businesses and must comply with the national regulatory framework. When State-owned companies act as arms of government or implementing agents of government policy, the State must ensure policy coherence and guarantee that the activities of those companies contribute to the realization of the human rights to water and sanitation.

22. The instruments delegating service provision, including contracts, must reflect the national regulatory framework and human rights standards. This means that these instruments should include a clear definition of the human rights responsibilities of service providers, coverage targets to eliminate inequalities in access, sufficient provision for participation, access to information and mechanisms for accountability. While ensuring this, non-State service providers are also expected to respect human rights. To that end, they must exercise due diligence to become aware of and address any potential impact on the realization of the human rights to water and sanitation, including by analysing the proposed delegating instruments from a human rights perspective (see A/HRC/15/31, para. 38), and where appropriate by undertaking human rights impact assessments. The General Assembly has recently called upon non-State actors, including business enterprises, to comply with their responsibility to respect the human rights to water and sanitation, including by cooperating with State investigations into allegations of abuses of these rights, and by progressively engaging with States to detect and remedy such abuses (see General Assembly resolution 70/169, para. 6).

23. As part of their human rights responsibilities, service providers should establish legitimate, accessible, predictable, equitable, rights-based and transparent grievance and remedy mechanisms that allow individuals to bring alleged human rights abuses to their attention (see A/HRC/8/5, paras. 82 and 92). This should be required by the regulatory framework as it is part of exercising human rights due diligence, since accountability mechanisms enable the service provider to become aware of its human rights impacts. Equally important is the responsibility of service providers to provide regulatory actors with the necessary information regarding service provision, especially information on their performance.[8]

III. Regulation in water and sanitation services

A. Role of regulation

24. The implementation of the human rights to water and sanitation depends heavily on national legal and regulatory frameworks. While constitutional recognition of these rights shows a strong national commitment to their realization, and facilitates their inclusion in domestic laws, it does not constitute a *conditio sine qua non* for their inclusion in national legal frameworks. Kenya, for example, underwent a process of legal and regulatory reform before enshrining these rights in its Constitution. Laws give voice to national policies, and aspire to achieving universal realization of the rights, while rules and regulations set performance standards and determine how services should be provided to the population, as they encapsulate the technical and scientific requirements needed to give meaningful content to the general terms contained in laws. The fact that the provision of water and sanitation services must be adequate for human dignity, life and health, in accordance with the International Covenant on Economic, Social and Cultural Rights, places concrete human rights obligations on national regulatory frameworks.

25. Regardless of the regulatory model chosen, currently most water and sanitation regulatory frameworks typically incorporate aspects of economic regulation (asset management planning and tariff-setting), of quality of service regulation and of drinking water quality regulation. Some may also include aspects of environmental regulation, mainly water abstraction and wastewater discharges, of user interface regulation or of legal and contractual regulation. The fact that different forms of regulation have been adopted for

[8] Lisbon Charter, art. 5.

specific purposes without explicit mention of the human rights to water and sanitation standards or principles does not necessarily mean that those forms of regulation do not take into consideration at least partially these standards and principles.[9] In this context, it is essential to emphasize a distinction between fully incorporating the human rights to water and sanitation into regulatory frameworks and choosing some selected aspects of it to comply with. For States to fulfil their human rights obligations, the whole human rights to water and sanitation framework must be reflected in States' regulatory norms and activities.

26. It is widely accepted that the scope for competition in the water and sanitation sector is limited, due to the prominence of significant upfront, sunk costs. This situation commonly results in the existence of a single service provider — public or private — in a given area, defined as natural monopoly, reinforcing the need for adequate regulatory measures to ensure that the rights of users are not compromised. In fact, historically, the rationale for introducing regulation in the water and sanitation sector has been related to instances of "market failure", in particular, prevention of monopoly abuse.[10] In such monopoly situations, regulatory bodies may be more exposed to the risk of capture by providers, due to information and power asymmetries among other factors, and by political interests, since these bodies are part of governments.[11]

27. Some authors argue that in recent years there has been a gradual shift in the normative goals of regulation from "pure" economic goals to a greater level of inclusion of social objectives. Some contend that the rationale for the regulation of water and sanitation services should involve three dimensions of sustainability: (a) the social sustainability of the services, by protecting users' interests; (b) the economic, infrastructure and human resource sustainability of the entities providing the services; and (c) the environmental sustainability, in terms of the efficient use of environmental resources.[12] Others have identified "human rights" as an additional regulatory rationale, according to which the regulatory body protects service users' rights directly "through developing standards reflecting these rights and monitoring their application through inspection".[13] From a human rights perspective, the regulatory framework's objectives, activities and norms should be derived from the human rights framework.

28. The role of regulation and monitoring becomes particularly challenging in rural areas and in densely populated informal settlements in urban areas, where large proportions of the population are not served by a piped network and rely on informal small-scale providers, which often operate unregulated and as a result provide poor-quality services at high prices.[14] Given the informal nature of the provision, and the lack of regulation and monitoring, users of such services do not have a complaint mechanism that they can avail themselves of when services are inadequate or unaffordable.

B. Types of regulatory frameworks

29. States have interpreted the role of regulation in various ways, depending largely on the norms applicable to their particular context and the needs that correspond to that context, which leads to a range of different regulatory models and institutional arrangements. The most appropriate approach differs from country to country and depends

[9] Robert Bos and others, *Manual of the Human Rights to Safe Drinking Water and Sanitation for Practitioners* (London, International Water Association, 2016), p. 58.

[10] Richard Franceys and Esther Gerlach and others, *Regulating Public and Private Partnerships for the Poor* (Cranfield University), chap. 3, p. 2.

[11] Emilio J. Lentini and Gustavo Ferro, "Políticas tarifarias y regulatorias en el marco de los Objetivos de Desarrollo del Milenio y el derecho humano al agua y al saneamiento", *Recursos Naturales e Infraestructura*, No. 164 (Economic Commission for Latin America and the Caribbean, 2014).

[12] Jaime Melo Baptista, *The Regulation of Water and Waste Services: An Integrated Approach (RITA-ERSAR)* (International Water Association Publishing, 2014), p. 43.

[13] Julian Daniel López Murcia, "Regulatory agencies and courts in the South: the overlaps in Colombian water regulation", *Journal of Politics in Latin America*, 5, 2 (2013), pp. 105-132.

[14] UN-Water Global Analysis and Assessment of Sanitation and Drinking Water, *Investing in Water and Sanitation: Increasing Access, Reducing Inequalities* (2014 report), p. 19.

on the general regulatory framework, the levels of institutional capacity and the types of problems that must be addressed.

1. Self-regulation

30. In some countries, regulatory frameworks include the model of self-regulation, whereby public service providers regulate their own activities, set tariffs and quality standards and monitor their own performance. Many countries with public service providers have not seen the necessity of creating a separate regulatory function for the water sector. In El Salvador, the National Water Mains and Sewers Administration, the main service provider in urban areas, sets its own quality of service standards, while the Ministry of Health monitors the quality of drinking water and the Ministry of Economics approves changes to water rates (see A/HRC/33/49/Add.1, para. 25). In Tajikistan, the Ministry of Energy and Water Resources has the overall responsibility for guaranteeing the national drinking water supply and coordinating relevant actors in the water sector (see A/HRC/33/49/Add.2, para. 10). It is also responsible for the adoption and implementation of State programmes for the development of drinking water supply systems, the establishment and regulation of water tariffs and the provision of public information.

31. Self-regulation raises significant human rights challenges in terms of guaranteeing independent monitoring and providing reliable accountability mechanisms. Regulatory principles such as impartiality, accountability, transparency and good governance can potentially be compromised by self-regulation as there is no separation between policy, regulation and service provision. Benchmarking and user consultation and participation also seem to be less common. Self-regulation can also lead to a lack of uniformity in performance, including in tariff-setting, with different service providers abiding by different standards.

2. Regulation by contract

32. Regulatory frameworks may also be characterized by a broad spectrum of contractual arrangements between governments which formally delegate service provision, and third parties. In such cases, the instrument delegating service provision defines the relationship between the public asset owner and the service provider and sets service standards. In the case of State-owned companies, management will usually be delegated via legislation, decrees or contracts, while public authorities will often enter into contracts with private providers. Contracts may differ according to the ownership of assets, the responsibility for capital investments, the allocation of risks, the responsibility for operations and maintenance, and the typical contract duration. France is a country with a long history of this type of regulation, established through private-sector participation contracting with local government.

33. A number of human rights challenges arise when regulating service provision by contract, particularly when non-State actors are involved. Such challenges include guaranteeing transparent and democratic decision-making, addressing power asymmetries in the bidding and negotiation process, ensuring affordable services, avoiding disconnections in cases of inability to pay, ensuring monitoring and accountability, and addressing corruption. It is also important that contracts, which are normally valid for decades, can be reviewed and adapted over time.

34. Meaningful public participation and access to information are human rights principles that often tend to be overlooked by States and service providers during the process of tendering, bidding and contract negotiation. From a human rights perspective, it is crucial that governments ensure that contractual arrangements include the necessary human rights safeguards, and that overall they contribute to, rather than undermine, the realization of the human rights to water and sanitation, without discrimination.

35. Regulation by contract can be combined with supervision by regulatory actors. In these cases, service standards and tariffs agreed upon by the parties to the contract have to be approved by the regulatory actor. The intervention and the oversight of the contract by a regulatory actor, if oriented by the human rights framework, can contribute to the realization of the rights to water and sanitation.

3. Regulation by a separate regulatory body

36. In the past two decades, a general trend in many countries in terms of regulation has been the establishment of public entities that are expected to be independent from providers, governments and the direct administration of the State, designated as independent regulatory bodies. The need for autonomous regulatory bodies has been reinforced by the belief that policy, regulation and provision of services should preferably be separated to ensure maximum benefit from the expertise required and to provide transparency.[15]

37. The functions of these bodies include standard-setting, examining water and sanitation services for compliance with relevant standards, providing a forum for complaints by individuals, and setting or signing off on tariffs. When the exercise of these functions is guided by the human rights framework, this regulatory model can contribute significantly to the progressive realization of the human rights to water and sanitation. However, in the absence of a strong national policy and legal framework on the human rights to water and sanitation, these bodies also face challenges in realizing these rights.

38. The International Water Association's Lisbon Charter underscores the importance of ensuring an adequate level of institutional, functional and financial independence of regulatory bodies.[16] Some of the features that would characterize independent regulatory bodies include: (a) a stable mandate, which does not depend on either the electoral cycle or changes of government; (b) autonomy in exercising their regulatory functions; (c) the definitive nature of their decisions, which can only be challenged in the courts; and (d) substantial administrative autonomy in their human and budgetary resource management.[17]

39. However, some argue that independence from the government may be both unrealistic and in some situations undesirable.[18] In essence, regulatory bodies must ensure the implementation of public policies defined by the government for the regulated sectors. This means that in situations where water policy needs to be reconciled or balanced with social and public policy in order to pursue human rights standards (e.g. affordability) or comply with the government's international human rights obligations, regulatory decision-making processes should encourage the meaningful participation of the relevant governmental sectors (see A/HRC/36/45/Add.1, para. 36). Governments should be able to legitimately influence both the process of regulatory decision-making and its outcomes in cases where regulation by itself is not sufficient to meet the standards of the human rights to water and sanitation. While the independence of regulatory bodies from governments should not be understated, particularly in countries where corruption is rampant, the question should not be considered in isolation from human rights considerations.

40. A growing number of regulatory bodies have been created in recent years. The Palestinian Water Sector Regulatory Council was established by Water Decree by Law No. 14 in 2014, and its mandate includes monitoring the performance of all service providers, approving water prices, issuing licences, setting qualitative standards and handling complaints. Similarly, in Portugal, Law No. 10/2014, establishing the Water and Waste Services Regulatory Authority, confers on the Authority monitoring and enforcement powers and the power to regulate, which apply to all service providers. This is also the case of Brazil, a federal State, which passed a National Water and Sanitation Act in 2007 that establishes guidelines for the creation of regulatory agencies at the municipal, intermunicipal or State level.

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[15] *The Regulation of Water and Waste Services: An Integrated Approach (RITA-ERSAR)*, p. 42.

[16] Lisbon Charter, art. 7.4.

[17] *The Regulation of Water and Waste Services: An Integrated Approach (RITA-ERSAR)*, p. 2.

[18] Tony Prosser, "Regulation and social solidarity", *Journal of Law and Society*, vol. 33, No. 3 (2006), pp. 364-387.

IV. Core functions of regulatory actors

A. Setting standards

41. One of the key roles of regulation is to set performance standards. Setting standards for service provision is one of the main functions of the State. The State has the duty to comply with its obligations under the International Covenant on Economic, Social and Cultural Rights and must ensure that those carrying out regulatory functions contribute to the progressive realization of the human rights to water and sanitation.[19] This means that the exercise of regulatory functions in general, and the making of regulation in particular, must comply with the human rights framework regardless of the public or State body that is carrying them out.

42. Therefore, in regulating water and sanitation services, it should be recognized, as a starting point, that water and sanitation are human rights derived from the right to an adequate standard of living (see art. 11 of the International Covenant on Economic, Social and Cultural Rights) and are inextricably related to the right to the highest attainable standard of physical and mental health (see art. 12 of the Covenant on Economic, Social and Cultural Rights), as well as to the right to life (see art. 6 of the International Covenant on Civil and Political Rights) and the right to human dignity (see arts. 1 and 22 of the Universal Declaration of Human Rights). According to international human rights law, the human right to water entitles everyone, without discrimination, to have access to sufficient, safe, acceptable, physically accessible, and affordable water for personal and domestic use. The human right to sanitation entitles everyone, without discrimination, to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure and socially and culturally acceptable and that provides privacy and ensures dignity. From a human rights perspective, the ultimate objective of regulation is to give practical meaning to the normative content of these rights, as follows:

1. Availability

43. Regulations should give a practical meaning to "availability" and ensure, at least, access to a minimum essential amount of water that is sufficient, reliable and safe for personal and domestic uses to prevent disease. According to the World Health Organization (WHO) guidance, an intermediate level of access, to 50 litres per person per day, represents a low level of health concern (provided that absence of contamination is rigorously assessed), while an optimal level of access, to 100 litres per person per day, represents a very low level of health concern.[20] A regulatory interpretation of "availability" should also consider situations where additional supply of water is required due to health issues, climate conditions (i.e. drought), emergency/disaster situations,[21] work conditions, or any other special circumstances; and situations of disruption to water supply.

44. With respect to sanitation, regulatory frameworks should prescribe a sufficient number of sanitation facilities within, or in the immediate vicinity, of each household (see A/HRC/12/24, para. 70). The assessment of the sanitation requirements of any community must be informed by the context, as well as the characteristics of particular groups which may have different sanitation needs (e.g. women, persons with disabilities, children). Where a piped network is not available, regulation should consider the possibility of alternative solutions, such as the construction and maintenance of sanitation facilities, and the disposal and treatment of waste water. In cases where sanitation facilities are shared, regulation should envisage a sufficient number of facilities available.

45. Regulatory standards should prioritize access to both water and sanitation facilities in public places in sufficient numbers; in institutional facilities, including hospitals,

[19] See Committee on Economic, Social and Cultural Rights general comment No. 15, para. 51.

[20] World Health Organization (WHO), "Domestic water quantity, service level and health", available from www.who.int/water_sanitation_health/publications/wsh0302/en/.

[21] WHO, "How much water is needed in emergencies", July 2013.

schools, public transport hubs, prisons, and places of detention, at the workplace and in rented housing, taking into consideration the special needs of, inter alia, women and girls; and in relation to those without a permanent dwelling, including homeless people and nomadic communities. Regulation should separate access to water and sanitation services from land tenure, often an obstacle to accessing these services in informal settlements.

2. Accessibility

46. A regulatory interpretation of physical accessibility of water and sanitation facilities should provide as minimum standards that these facilities are within safe physical reach or in the immediate vicinity of each household at all times of day and night.[22] In its proposed indicators for monitoring Sustainable Development Goal 6, the WHO/UNICEF Joint Monitoring Programme for Water Supply and Sanitation suggests that a round trip to access an improved drinking water source should not take longer than 30 minutes, including queuing (basic level), and that a basic level of sanitation should provide access to an improved sanitation facility not shared with other households. Furthermore, regulation should specifically address the situation of those with special needs in terms of accessibility, such as children, persons with disabilities, older persons, pregnant women, and people with special health conditions, and advise that the design of sanitation facilities accommodates their specific needs, while being technically safe to use. Places such as schools, preschools, care homes and detention centres require specific regulations to ensure physical accessibility.

3. Quality and safety

47. National standards must ensure that the water used for each personal and domestic use is safe for human health as regards the presence of microorganisms, chemical substances and radiological hazards.[23] The WHO *Guidelines for Drinking-Water Quality*[24] provide guidance for setting national regulations and standards for water safety in support of public health. The *Guidelines* describe reasonable minimum safe-practice requirements to protect health and provide numerical "guideline values" for constituents of water or indicators of water quality. When defining mandatory limits, the *Guidelines* are an authoritative source and must be taken into consideration in the context of local or national environmental, social, economic and cultural conditions.

48. Even when in place, regulations are not always used to their full potential and best advantage to maximize public health benefits. For example, regulations do not always clearly indicate which stakeholders are accountable and liable for identifying, responding to and mitigating risks to drinking-water quality. Regulations should also contemplate situations where water supply is unsafe, by providing coping measures (e.g. alerts) and precautionary actions. In this context, access to information on water quality is essential and should be safeguarded by regulation, using clear, easy-to-understand language, and be readily accessible to all the population.

49. The regulation of sanitation facilities should provide that they are designed and built in a way that effectively prevents human, animal and insect contact with human excreta, and should safeguard access to safe water for handwashing, anal and genital cleansing and menstrual hygiene, and ensure mechanisms for the hygienic disposal of menstrual products (see A/HRC/12/24, para. 72). The Special Rapporteur recommends that regulations require that the specific needs of women and girls are incorporated into the design, implementation, monitoring and evaluation of water and sanitation facilities (see A/HRC/33/49, para. 77 (h)). To that end, their participation in the design of the facilities should be sought by service providers.

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[22] See Committee on Economic, Social and Cultural Rights general comment No. 15, paras. 12 (c) (i) and 37 (c).

[23] Ibid., para. 12 (b).

[24] See www.who.int/water_sanitation_health/publications/drinking-water-quality-guidelines-4-including-1st-addendum/en/.

50. Regular cleaning, emptying of pits or other places that collect human excreta, and maintenance should also be regulated, in order to ensure the sustainability of sanitation facilities and continued access to them. Where on-site sanitation solutions are used, regulation must ensure that pits and septic tanks are required to be constructed in a way that contents can be adequately collected and disposed of at a sludge treatment facility rather than dumped into the environment.[25]

4. Affordability

51. Regulation must provide a multifaceted and contextual interpretation of affordability, in line with the human rights framework. National standards must ensure that water and sanitation services, whether privately or publicly provided, are affordable for all, including the poorest, and that water and sanitation tariffs do not compromise or threaten the realization of other rights.

52. While affordability provisions in water and sanitation laws are quite common, the challenge is to translate general provisions into concrete affordability standards (see A/HRC/30/39, para. 26). The Global Analysis and Assessment of Sanitation and Drinking Water 2016-2017 country survey indicates that 68 per cent of respondent countries have a regulatory authority that is responsible for setting urban tariffs for either drinking water or sanitation or both. To ensure the affordability of services, regulatory frameworks must capture the specific needs of the several groups that live in vulnerable situations and offer differentiated solutions for the two main expenses incurred by users: the one-off connection fees that contribute to capital construction costs, and the cost of the recurrent charges (tariffs for operation, maintenance, capital assets renewal, and any financing costs of capital for new fixed assets). To this end, regulatory actors must promote the use of appropriate measures, including free or low-cost service provision for households with very low or no income, income supplements, social tariffs and targeted subsidies. It is essential that financial sustainability does not become the priority of tariff-setting, to the detriment of affordability, but that both elements are reconciled. Similarly, it is essential that investment in the extension of distribution networks to low-income unserved areas is not delayed in an attempt to minimize the affordability challenge.

53. Inextricably linked to the question of setting affordability standards for water and sanitation services is the issue of disconnections. Regulatory frameworks should set an outright prohibition on disconnections due to inability to pay.

5. Acceptability, privacy and dignity

54. The regulatory framework must provide a contextual meaning of the social and cultural acceptability of water and sanitation facilities. This cannot be done in a meaningful way without the genuine participation of those who use the services. While water should be of an acceptable colour, odour and taste for each personal or domestic use,[26] these are highly subjective parameters, and perceptions of these characteristics depend on local culture, education and experience.[27] Personal sanitation is a highly sensitive issue across regions and cultures, and differing perspectives about which sanitation solutions are acceptable must be taken into account when designing, positioning, and setting conditions for the use of sanitation facilities (see A/70/203, para. 13). Regulations should stipulate that facilities need to allow for acceptable hygiene practices in specific cultures, such as anal and genital cleansing, and menstrual hygiene (see A/HRC/12/24, para. 80). Acceptability often requires separate facilities for women and men in public spaces, and for girls and boys in schools, which should be reflected in regulatory frameworks. Regulation should play an essential role in ensuring that toilets are constructed in a way that safeguards privacy and dignity.

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[25] Inga Winkler, "The human right to sanitation", *University of Pennsylvania Journal of International Law*, vol. 37, No. 4 (2016), p. 1383.

[26] See Committee on Economic, Social and Cultural Rights general comment No. 15, para. 12.

[27] *Manual of the Human Rights to Safe Drinking Water and Sanitation for Practitioners*, p. 20.

6. Participation and access to information

55. To meet human rights standards, regulatory decision-making processes must ensure genuine public participation in key decisions. Every individual and group has the right to participate actively, freely and in a meaningful way in the process of setting service standards that may affect their enjoyment of the rights to water and sanitation. Positive measures will often be required to ensure that all people, including women and populations in vulnerable situations, are given a real opportunity to take part in and influence the making of regulations. The Special Rapporteur cautions that attempts to ensure women's participation through regulatory processes may not correspond to local customary norms and the implementation may subsequently fail (see A/HRC/33/49, paras. 56 and 59). Therefore, mechanisms must be put in place to involve women in formulating regulations on water and sanitation and to remove barriers to their participation.

56. Regulations should ensure that decisions on the type and location of services and on improvements to services are participatory and inclusive. Inclusiveness in this process is crucial, so that services are designed to respond to the needs of the population, including of those in vulnerable situations.

57. Access to information and transparency are essential in order for participation to be meaningful. Regulatory actors must enable a culture of transparency by providing access to information that is objective, comprehensible, clear and consistent and is made available to everybody in different formats and in the appropriate language. The Special Rapporteur has observed that in El Salvador, decisions on water rationing measures are not systematically publicized and there seems to be no standard rule for informing users about such measures (see A/HRC/33/49/Add.1, para. 32). Similarly, the results of quality tests on water for human consumption are neither made public nor sent to users. Regulation of the ways in which information should be shared is therefore essential.

7. Equality and non-discrimination

58. A regulatory framework should contain positive measures or affirmative action that ensure the progressive realization of the human rights to water and sanitation for all, in a non-discriminatory manner, while eliminating inequalities in access, including for individuals belonging to groups at risk and groups that are marginalized on the grounds of race, gender, age, disability, ethnicity, culture, religion, national or social origin or any other grounds. Such measures should target specific challenges, including: (a) prioritization of the extension of coverage of water and sanitation services to rural and deprived urban areas, while taking into account the specific needs of women and children; (b) the denial of the rights to water and sanitation to people living in informal settlements, on the grounds of their housing or land status; and (c) the lack of affordability of services for the poorest.

8. Sustainability

59. When setting standards, regulation should aim to achieve the economic, environmental and social sustainability of service provision. Regulation should mirror the State's obligation to guarantee the rights to water and sanitation sustainably and without discrimination, for both present and future generations.[74] This means that today's services should not limit or negatively affect future generations' access to services. To that end, when developing a regulatory framework, States should ensure an integrated regulatory approach for the services, including both the regulation of the sector as a whole and the regulation of each service provider individually.[75] Regulation also has a role to play in contributing to providing preparedness and resilience measures for emergency situations.

60. Promoting the affordability of services, together with a level of cost recovery that meets the requirements for financial sustainability, is a major challenge for regulatory frameworks. Regulatory actors must strike the fine balance between enabling service providers to adequately perform operational and maintenance activities, considering

[74] See Committee on Economic, Social and Cultural Rights general comment No. 15, para. 11.

[75] Lisbon Charter, art. 7.3.

infrastructural, environmental and resource costs, and ensuring affordability. Economic perspectives and human rights perspectives are possible to reconcile, requiring from regulatory actors innovative approaches and a redesign of economic instruments in some situations.

9. Accountability

61. In order to be effective, regulatory frameworks should allow for independent monitoring of service providers' compliance with the human rights to water and sanitation and should safeguard the right of individuals to submit complaints when the enjoyment of their rights to water and sanitation has been compromised.[50] Regulatory frameworks should impose appropriate and proportionate sanctions on service providers in cases of non-compliance with the normative content of the human rights to water and sanitation.[51]

B. Monitoring implementation

62. Monitoring is essential for understanding current levels of access to water and sanitation services — by focusing on issues such as affordability and water quality, identifying barriers to access for unserved or underserved populations, and ensuring that participatory processes are inclusive. National and local monitoring processes gather information that helps identify drivers and bottlenecks, highlight gaps, and assess strengths and challenges, and as such are essential for the realization of the human rights to water and sanitation.

63. Regulatory actors play an essential role in monitoring service providers' compliance with the normative content of the human rights to water and sanitation. Access to information is crucial in this process. Regulatory actors must be able to collect, analyse and disseminate accurate information on the performance of all service providers. On the other hand, service providers have the responsibility to provide to regulatory actors complete and reliable information on the services, including on their quality, on complaints received from users and on challenges faced in extending services to poorer areas.

64. Monitoring should not only examine compliance of service providers with national and local standards, but should also assess whether the provision of services is carried out in a way that ensures compliance with international human rights obligations such as equality and non-discrimination, participation, access to information and accountability. Regulatory actors are responsible for setting and monitoring indicators of progress towards the realization of the human rights to water and sanitation, which should reflect human rights principles and standards in a direct way. Indicators should cover all the different elements of the rights to water and sanitation and be disaggregated by prohibited grounds of discrimination,[52] while setting specific benchmarks (feasible targets for gradually meeting the indicators) in relation to each indicator.

65. The principle of progressive realization should guide the monitoring process and any retrogression observed in service provision should be prohibited and sanctioned by the regulatory framework.

1. Formal service providers

66. Regulatory frameworks are often only applied to formal service providers, which may range from large-scale utilities to small municipal and cooperative providers. Where formal provision exists, it is expected that there will be available data on standards and targets set, which can be monitored by a regulatory actor. However, small municipal and cooperative providers often have more difficulties in living up to quality standards than large-scale utilities do. Regulatory actors can play a proactive role in enhancing small-scale

[50] Ibid., art. 44.
[51] Ibid., art. 49.
[52] See Committee on Economic, Social and Cultural Rights general comment No. 15, para. 53.

providers' performance by monitoring them, providing them with information and recommending strategies that might help them improve their standards.

67. According to *Investing in Water and Sanitation: Increasing Access, Reducing Inequalities* (UN-Water Global Analysis and Assessment of Sanitation and Drinking Water, 2014 report), less than half of countries report a functioning process whereby formal rural drinking-water service providers report the results of their internal monitoring to regulatory authorities and also use the results to trigger corrective action. Moreover, performance results are not typically made public for a majority of service providers. Only for urban formal service providers were performance results made public for over 60 per cent of respondent countries. Countries indicated that the extent of independent surveillance of water quality was far greater in urban areas: nearly 70 per cent of countries reported surveillance in urban areas, compared to only 40 per cent in rural areas.

68. Similarly, formal sanitation service providers, whether urban or rural, typically do not report data to regulatory authorities. While a regulatory framework and standards for sewerage networks are generally available, they are not always effectively put in place and monitored.[33] Sewerage systems often raise affordability concerns for the State, the service provider and the user and require careful monitoring. Connection charges may prevent poorer households from making use of this service, unless appropriate regulation is in place to ensure affordability.

2. Informal service providers

69. The situation becomes far more complex when monitoring informal small-scale providers. Piped systems are often not available to rural households or to those living in informal settlements in urban areas (see A/70/203, para. 64). This represents a significant problem of inequality in access, as people living in these areas, who are often poorer, have to rely on alternatives that are often of lower quality and that tend to cost far more. In these situations, some types of services, such as informal shared or communal facilities and unregulated individual on-site solutions, are seen as necessary short- to medium-term solutions. However, without suitable regulation and monitoring, none of these services can be guaranteed to comply with human rights standards.

70. Non-governmental organizations and community-based organizations are taking on an important role in informal service provision, stepping in where the State is not involved in such activities. Many of the same challenges in relation to regulation and accountability apply to the activities of such organizations, for instance ensuring consistent standards as regards quality of services and ensuring that organizations are accountable to the people they serve. Population groups in many countries are served by community and informal service providers, which rarely report internal monitoring results to authorities.[34]

71. One approach to monitoring in informal settlements that has shown positive results is the use of participatory geographic information systems, which merge technical spatial information with a local community's location-specific knowledge, often producing rich data including on land use, water sources, differentiated access to resources and sites of actual or potential environmental hazards. For instance, OpenStreetMap[35] initiatives in informal settlements in Nairobi have generated detailed data indicating how many households share a toilet, whether there are gender-specific toilets, whether the toilets have disability access and whether the toilets provide sanitary bins for women (see A/69/213, para. 82).

72. It is important that States and regulatory actors recognize the existence of informal service provision and assess the role that it plays in a given context. While the choice of the best policy approach to informal providers rests with the State and will depend on the particular circumstances of each case, human rights law prescribes that where services are

[33] See A/70/203, para. 46. See also www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/Differentlevelsandtypesofservices.aspx.

[34] Ibid., para. 19.

[35] See www.openstreetmap.org.

operated or controlled by third parties, States must prevent them from compromising equal, affordable and physical access to sufficient, safe and acceptable water.[16] In such cases, the Committee on Economic, Social and Cultural Rights advises that an effective regulatory system must be established. It is important, in these situations, that regulatory instruments and the institutional set-up chosen be adapted to the nature of small-scale service provision.

73. The State of Palestine reports that in its territory informal providers are not only present but are essential to ensure some communities' access to water. This delivery is the only effective option for many communities, hence it is considered a public service. Currently, different governmental institutions are collaborating in order to ensure regulation and supervision of these informal providers. Efforts are being made to license and certify them. The Government's long-term strategy is to fully connect local communities to public water distribution networks, but in the short term the strategy is to regulate this service and facilitate the mutual support between the local communities and informal service providers.

74. In Kenya, on the other hand, the regulatory framework does not apply to water providers who supply fewer than 20 households or less than 25 cubic metres of water per day for domestic use. These providers are currently outside the regulated tariff structure and the system of regular quality inspections.[17] The Government's position is that in the long term, informal service providers should be linked to the formal system, and should comply with official tariffs and quality standards. In the short term, the Government tolerates informal provision but does not regulate it.

75. Whether States decide to aim for regulation, or to use incentives for the provision of quality services at affordable prices, or to phase out small-scale providers in the long term and replace them with formal provision, it is essential that they do not worsen the situation and leave people without access to services (see A/HRC/15/31, para. 53). In particular, when granting exclusivity to formal providers extending into areas that have previously been served by small-scale providers, States must ensure that connection to a piped network is actually an affordable alternative. In these situations, affordability studies should be carried out by regulatory actors in order to avoid retrogression.

76. The regulation of water and sanitation services (or the lack thereof) in rural areas is similarly challenging. Rural water supplies are often managed by local community organizations or members, untrained and unpaid, and it is argued by some that they would benefit from provision of training, resources, and assistance, rather than regulatory enforcement.[18] However, these two measures are not incompatible and it is a question for governments to balance support for communities with regulation.

77. The WHO/UNICEF Joint Monitoring Programme for Water Supply and Sanitation 2015 update shows that 70 per cent of people who do not use improved sanitation facilities, and 90 per cent of people who practise open defecation, live in rural areas. From a regulatory perspective, rural sanitation is a major challenge, as the need for safe sanitation is often not recognized. The construction and maintenance of latrines is often neglected, partly due to the taboo surrounding sanitation. Often, the vast majority of sanitation solutions are not regulated, managed or monitored by any State body (see A/HRC/33/49/Add.2, para. 14). The recognition of sanitation as a distinct right by the General Assembly and by the Human Rights Council warrants its political prioritization by States and the creation of an enabling environment for its progressive realization, including through the establishment of appropriate regulatory frameworks, adapted to local circumstances, that address the individual dignity and public health dimensions of this right.

[16] See Committee on Economic, Social and Cultural Rights general comment No. 15, para. 24.

[17] United Nations Development Programme, *Small-scale Water Providers in Kenya: Pioneers or Predators?* (2011), p. 29.

[18] WHO, *Water Safety Planning for Small Community Water Supplies: Step-by-step Risk Management Guidance for Drinking-water Supplies in Small Communities* (2012).

3. Regulatory bodies

78. Compared to other areas of regulation, water and sanitation regulation is characterized by the fact that the regulated services relate directly to the fulfilment of human rights. While water and sanitation regulatory bodies are well positioned to contribute to the progressive realization of the rights to water and sanitation, their activities, whether through their regulations and decisions or through failure to live up to their mandate, can also potentially result in breaches of these rights. In their plans and activity reports, regulatory bodies should provide clear and relevant information on their policies, procedures and activities and indicate how they contribute to meeting human rights standards progressively.

79. Regulatory bodies' activities should be controlled and monitored by different entities, such as user councils, parliamentary committees or courts of auditors. For example, in early 2014, the Portuguese Court of Auditors released a report on the audit of the regulation and management of water service concessions and public-private partnerships. The Court's audit examined the activity of the Water and Waste Services Regulatory Authority as the regulator of such concessions, identified the processes of contract revision, identified public spending involved in each concession and examined the effectiveness of concessions in terms of the quality of services (see A/HRC/36/45/Add.1, para. 39). Its main conclusions show that the majority of concessions consistently benefited the private sector to the detriment of municipal budgets and of affordability of services for users (see A/HRC/36/45/Add.1, paras. 39 and 40).

C. Ensuring accountability

80. Accountability at the national level can be achieved through administrative, quasi-judicial and judicial mechanisms. Mechanisms can be based at the level of the service provider or at the level of the State. For example, when a complaint is not resolved at the level of the service provider, individuals should have the right to address their complaint to an administrative mechanism such as a regulatory body.

81. Regulatory actors play a key role in ensuring service providers' accountability for non-compliance with the human rights to water and sanitation. To ensure accountability, regulatory frameworks must clearly define the roles and responsibilities of all stakeholders involved in service provision and provide clear and accessible information on the complaint mechanisms available at different levels. A growing number of independent regulatory bodies have complaint mechanisms for the resolution of disputes between service providers and users.

82. In the resolution of complaints against services providers, regulatory actors must ensure that any action that interferes with an individual's enjoyment of the rights to water and sanitation is preceded by an opportunity for genuine consultation with the individual affected, the timely and full disclosure of information on the proposed measures, reasonable notice of proposed actions, legal recourse and remedies for the individual affected, and legal assistance for obtaining legal remedies.[39]

83. The regulatory body must also be endowed with the power to enforce existing regulations and contractual agreements. Mechanisms for contract enforcement must include adequate incentives, penalties for non-compliance, such as fines, and the possibility of revocation of the contract (see A/HRC/15/31, para. 52).

84. In countries where no separate regulatory mechanism exists, but where national human rights institutions or ombudspersons' offices are present, individuals may resort to these independent bodies for redress when their human rights to water and sanitation have been compromised by a service provider. Accountability can be provided by these quasi-judicial bodies, whose mandate often includes handling human rights complaints.

[39] See Committee on Economic, Social and Cultural Rights general comment No. 15, para. 56.

85. When administrative or national quasi-judicial mechanisms do not exist or are not able to successfully resolve a dispute, the right to an effective remedy requires that people whose rights to water and sanitation have been affected be able to turn to a court. A right of judicial review as a last resort is sometimes indispensable. In this context, it is critical that judicial systems uphold the justiciability of the human rights to water and sanitation in line with international human rights law.

86. Accountability must be ensured not only in relation to service providers but also in relation to regulatory bodies' decisions and activities. The International Water Association's Lisbon Charter emphasizes that regulatory frameworks should establish the necessary mechanisms to ensure accountability and public scrutiny of regulatory bodies.[40] Individuals should have the right to judicially challenge a regulatory body's decision or regulation that interferes with the enjoyment of their human rights to water and sanitation. The Colombian water and sanitation regulatory commission issued a number of regulations obliging service providers to disconnect water services when there is no payment during a three-month period. However, cases brought before the Constitutional Court by low-income families were ruled in the families' favour, as they were being deprived of a "minimum essential level of water" due to their inability to pay.[41]

V. Conclusions and recommendations

87. **Regulatory frameworks are essential for the implementation of the human rights to water and sanitation and must support the State's obligations with regard to these rights. International human rights law does not call for a particular choice of regulatory framework. What is essential from a human rights perspective is that those carrying out regulatory functions be immune to pressures from any illegitimate interests and that the main objectives of regulation be aligned with the water and sanitation human rights standards and principles. Regulation plays a key role in monitoring service providers' compliance with the normative content of the human rights to water and sanitation and in ensuring accountability. Identifying and avoiding violations of these rights and retrogressions in their progressive realization is also key for the regulation of water and sanitation services. As public bodies, regulatory actors are bound by States' international human rights obligations, and their functions should go beyond mere policing and include supporting and influencing policy changes in line with the human rights framework.**

88. **The Special Rapporteur considers that a more nuanced approach is needed regarding the concept of independence of regulatory bodies. In particular, the involvement of governmental sectors in specific situations of regulatory decision-making should be safeguarded when it is relevant to ensure that human rights standards are met.**

89. **In line with the above, the Special Rapporteur recommends that States:**

(a) **Adopt water and sanitation policies and strategies incorporating the human rights to water and sanitation, and take deliberate, concrete and targeted steps to establish a regulatory framework informed by these rights and regulatory bodies operating in an impartial, transparent and rights-based manner;**

(b) **Clearly define necessary procedures and measures in the regulatory framework to meet the State's obligations to respect, protect and fulfil the human rights to water and sanitation;**

(c) **Ensure that the mission, mandate and objectives of regulatory actors incorporate the principle of progressive realization of the human rights to water and sanitation without discrimination of any kind;**

[40] Lisbon Charter, art. 7.6.

[41] See www.corteconstitucional.gov.co/relatoria/2009/T-546-09.htm and www.corteconstitucional.gov.co/relatoria/2012/T-273-12.htm.

(d) Ensure that regulatory frameworks provide a multifaceted and differentiated interpretation of affordability, capturing the specific needs of those living in vulnerable situations;

(e) Ensure that access to water and sanitation services is not conditioned by land tenure in law and in regulatory frameworks;

(f) Ensure through adequate regulation that, when extending formal services to informal settlements, these services are affordable and do not interfere with people's access;

(g) Prohibit disconnections due to inability to pay, in law and in regulatory frameworks;

(h) Ensure that instruments delegating service provision, including contracts, reflect the national regulatory framework and human rights standards;

(i) Include, in regulatory frameworks, specific requirements ensuring adequate provision of services to, inter alia, homeless people, poor nomadic communities, and victims of situations of armed conflict, emergencies, natural disasters or climate change effects;

(j) Include, in regulatory frameworks, specific requirements ensuring adequate provision of services to, inter alia, schools, health facilities, prisons, transport hubs and public spaces in general;

(k) Establish the necessary mechanisms to ensure accountability of regulatory actors;

(l) Inform and train regulatory actors on the practical implications of the realization of the human rights to water and sanitation in their area of work.

90. **In addition, the Special Rapporteur recommends that regulatory actors:**

(a) Comply with the State's international human rights obligations with regard to the rights to water and sanitation and take targeted steps towards the full realization of these rights;

(b) Carry out independent monitoring of service providers' compliance with the normative content of the human rights to water and sanitation and ensure that in cases of retrogression providers address the root causes of these violations;

(c) Set and monitor indicators that cover all the elements of the rights and disaggregate them by prohibited grounds of discrimination;

(d) Ensure non-discriminatory service coverage by service providers, including to poorer neighbourhoods, informal settlements and rural areas;

(e) Provide access to objective, comprehensible, clear and consistent information and facilitate free, active and meaningful participation in regulatory decision-making processes;

(f) Ensure that tariff-setting reconciles financial sustainability with affordability, while prioritizing and protecting the needs of those living in poverty;

(g) Support and influence policy formulation and legislative changes in line with the human rights to water and sanitation;

(h) Provide clear and relevant information on their policies, procedures and activities and indicate how they contribute to the progressive realization of the human rights to water and sanitation;

(i) Safeguard the right of individuals to submit complaints when the enjoyment of their rights to water and sanitation has been compromised by service providers.

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Report of the Special Rapporteur on the human rights to safe drinking water and sanitation on his mission to Portugal

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the human rights to safe drinking water and sanitation, Léo Heller, on his mission to Portugal from 5 to 13 December 2016.

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Report of the Special Rapporteur on the human rights to safe drinking water and sanitation on his mission to Portugal*

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* Circulated in the language of submission only.

I. Introduction

1. Pursuant to Human Rights Council resolution 33/10, the Special Rapporteur on the human rights to safe drinking water and sanitation, Léo Heller, undertook a joint official visit to Portugal from 5 to 13 December 2016 with the Special Rapporteur on the right to adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context (see A/HRC/34/51/Add.2), at the invitation of the Government. The purpose of the visit was to examine the progress made and identify remaining challenges in ensuring the full realization of the human rights to water and sanitation in the country.

2. During his mission he had the opportunity to meet with representatives of the Ministry of Foreign Affairs, the Ministry of the Environment, the Ministry of Education, the Ministry of Health, the Ministry of Labour, Solidarity and Social Security, the Ministry of Finance, the Ministry of the Economy, the parliament, the Office of the Ombudsman, the Court of Auditors, the municipalities of Cabeceiras de Basto and Celorica de Basto, the Portuguese Environment Agency, the Empresa Portuguesa das Águas Livres, Águas de Portugal, the Portuguese Water Partnership, the Water and Waste Services Regulation Authority and the Setúbal Region Intermunicipal Water Association. He visited communities in Loures, Cova da Moura, Amadora, Vidigueira, Cabeceiras de Basto and Celorico de Basto and talked to residents.

3. The Special Rapporteur expresses his appreciation to the Government of Portugal for its cooperation before, during and after the visit. He thanks all those who took the time to meet with him and to help him better understand the situation regarding access to drinking water and sanitation in the country.

II. Overview

4. In 1986, Portugal joined the European Economic Community, which was incorporated into the European Union in 1993. Thereafter, Portugal experienced an increase in economic growth. However, since 2007 Portugal has faced an unprecedented economic crisis. As a result, in April 2011, Portugal requested financial assistance and subsequently, an economic adjustment programme was adopted in May 2011 between Portugal and the European Commission, the European Central Bank and the International Monetary Fund (the troika). The memorandum of understanding and the loan agreement covering the period from 2011 to 2014 were signed thereafter. In June 2014, Portugal exited its three-year economic adjustment programme and is currently under post-programme surveillance until at least 75 per cent of the financial assistance received has been repaid. Among the conditions attached to the loan of €78 billion received by Portugal were a series of austerity measures, which have reportedly resulted in lower social protection and consequently in increased poverty. Social and human rights impact assessments were not conducted prior to the adoption of austerity measures (see A/HRC/34/51/Add.2, paras. 5-10). The memorandum of understanding does not include human rights principles and standards.

5. In general, reforms leading to greater private sector involvement have been imposed by the troika through loan or aid conditionality, debt reprogramming or loan forgiveness, without the proper protection for people living in vulnerable situations. In Portugal, while the memorandum of understanding did not explicitly impose the privatization of water services, it does mention the explicit will of the Government to "accelerate its privatization programme".[1] The Special Rapporteur notes that the economic environment resulting from the reform has also encouraged the national agencies to implement a more rigorous policy of full cost recovery in the water and sanitation sector in Portugal, potentially jeopardizing affordable access to water and sanitation services by the most disadvantaged populations.

[1] See memorandum of understanding, para. 3.31. Available from http://ec.europa.eu/economy_finance/eu_borrower/mou/2011-05-18-mou-portugal_en.pdf.

6. The economic crisis and fiscal adjustment response have led to the emergence of the so-called "new poor" and have resulted in increased poverty, homelessness, dramatically increased youth unemployment, lower social welfare benefits and pensions, and less affordable access to public services and to housing (see E/C.12/2016/1, para 3). While the country is currently in the process of economic recovery, the population in Portugal is still facing serious long-term challenges. Public funds for combating social exclusion and poverty were reduced and in 2014, 27.5 per cent of the Portuguese population were identified as being at social risk or socially excluded.[2] In 2015, the national poverty rate in Portugal was one of the highest in the European Union, at 19.5 per cent, while more than 11 per cent of the total population was at risk of poverty.[3] The economic crisis has also led to high unemployment rates (see A/HRC/34/51/Add.2, paras. 8-9). While there has been a slight decrease in unemployment rates in the past two years, unemployment still remains high, standing at 11.1 per cent in 2016.[4] Those social consequences from economic measures have an impact on access to water and sanitation services.

7. Portugal is a centralized State composed of the central Government, 308 municipalities and two autonomous governments: Azores and Madeira. The autonomous governments of Azores and Madeira each have a system of self-government, with democratically elected bodies and several powers and duties, which include legislative and executive powers (article 6 of the Constitution).[5] However, the regional political and administrative autonomy must be exercised within the overall framework of the Portuguese Constitution (art. 255 (3)) and the international commitments made by Portugal as a State. Accordingly, the autonomous governments, as part of the Portuguese State, have obligations under international human rights treaties incorporated through the national legislation, including the legal framework on access to water and sanitation.

8. During and after his visit, the Special Rapporteur had difficulty obtaining information on the basic data, coverage, water quality, affordability and quality of drinking water in the autonomous regions. Furthermore, he noted that there was a lack of dialogue between the autonomous regions of Azores and Madeira and the central Government of Portugal in the field of water and sanitation.

III. Legal and policy frameworks

A. Legal framework

1. International human rights law

9. At the international level, Portugal has ratified most of the core international human rights treaties, including the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities, which stipulate the right to an adequate standard of living including the human rights to water and sanitation.[6] Those rights are explicitly recognized in several international instruments, notably General Assembly resolution 64/292 and Human Rights Council resolution 33/10.[7] Portugal supported and voted in favour of those resolutions and continues to express its international commitment to the human rights to

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[2] See http://ec.europa.eu/eurostat/statistics-explained/index.php/People_at_risk_of_poverty_or_social_exclusion.

[3] Ibid. See also A/HRC/34/51/Add.2, para. 9.

[4] See www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_destaques&DESTAQUESdest_boui=274752745&DESTAQUESmodo=2.

[5] *In Portugal, except for issues of defence, homeland security and justice, the governments of Azores* and Madeira exercise autonomous authority in their respective regions.

[6] Portugal has not yet ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

[7] Portugal co-sponsored Human Rights Council resolutions 15/9, 16/2, 18/1, 21/2, 24/18 and 27/7. Portugal also co-sponsored General Assembly resolution 68/157, which was adopted without a vote.

water and sanitation. Portugal thereby affirmed that the right to an adequate standard of living includes the human rights to safe drinking water and sanitation.

10. At the regional level, Portugal ratified the European Social Charter in 1991 and the Revised European Social Charter in 2002. Additionally, Portugal has ratified several international treaties relating to water and sanitation, including the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, in 1994, and the Protocol on Water and Health, in 2006. As a State party to the Protocol on Water and Health, Portugal has the obligation to ensure access to water and sanitation to all and to promote equitable access to water and sanitation for all members of the population, especially those who are disadvantaged or socially excluded.

11. According to the Portuguese Constitution, the rules and principles of international law form an integral part of Portuguese law. The provisions set out in ratified international agreements must come into force in Portuguese domestic law (art. 8) and the provisions of the Constitution and of laws concerning fundamental rights must be interpreted and construed in accordance with the Universal Declaration of Human Rights (art. 16).

2. Constitutional and national law

12. Portugal does not explicitly recognize the rights to water and sanitation in its Constitution. However, the rights to water and sanitation are protected through other rights and principles, such as the principle of equality (art. 13), the principle of universality (art. 12), the right to housing, which includes the requirement for hygienic and comfortable conditions and for the preservation of personal and family privacy (art. 65), and the right to a healthy and ecologically balanced human living environment (art. 66). Furthermore, article 81 stipulates the State's primary duty "to adopt a national water policy, with rational use, planning and management of water resources".

13. Additionally, Portugal has in place legislation that transposes certain aspects of the human rights to safe drinking water and sanitation.[5] The Framework Environment Act (Law No. 19/2014) recognizes water as a fundamental right and notes that "the protection and management of water resources also aims to safeguard the human right to safe drinking water established by the United Nations, as well as universal access to sanitation, which is fundamental to human dignity". Another piece of legislation is the Water Act (Law No. 58/2005) which transposes European Directive 2000/60/EC and affirms two principles that are significant for setting water tariffs. On the one hand, water has social value and must be universally accessible for all basic human needs and it should be socially affordable. On the other hand, water has economic value, and must be used in an economically sustainable way, implying the recovery of costs for water services and the adoption of the principles of the polluter pays and the user pays.

14. With regard to sanitation, the Law on urban wastewater (Decree-Law No. 152/97) aims to provide adequate technical solutions for drainage and urban wastewater collection, treatment and disposal, pursuant to the European Directive 91/271/EEC concerning urban wastewater treatment.

15. During the visit, the Special Rapporteur was informed of several pending bills concerning water that had been proposed by the parliament. He wishes to draw attention to draft law No. 335/XIII/2nd (BE) on the protection of individual and common rights to water, which establishes the fundamental rights to water and sanitation, and also aims to redirect water policy with a view to the equitable enjoyment of these services.[6] The draft was the result of initiatives taken by civil society, particularly the "Water for all" project. The Special Rapporteur welcomes the fact that the bill explicitly stipulates that sanitation is a human right in addition to the right to water. The Special Rapporteur reiterates that the right to sanitation should also be enshrined in national legislation, highlighting in that regard General Assembly resolution 70/169, which recognized the human right to sanitation as a distinct right.

[5] All Portuguese legislation is available from https://dre.pt.

[6] See www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheIniciativa.aspx?BID=40745.

16. The Special Rapporteur underscores the importance of explicit legal recognition of the human rights to water and sanitation at the national level. Such recognition will allow for comprehensive legal protection of those rights and will complement the *à la carte* approach according to which only certain principles of human rights are enshrined in existing Portuguese legislation. Furthermore, having a national law is key to ensuring the justiciability of the human rights to water and sanitation. It is crucial that national legislation provides a clear guarantee to individuals and groups who are alleged victims of a violation of their rights to water and sanitation, so that they are able to file a complaint before a judicial body, request legal remedies and have those remedies enforced. The Special Rapporteur emphasizes the international commitment of Portugal to provide access to remedy, as highlighted in the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which it ratified in 2013, and under article 20 of its Constitution.

B. Policy framework

17. In addition to legislative measures, the Government is obliged to adopt administrative, educational, social and other measures to realize the human rights to water and sanitation. Continental Portugal has a master plan on water and sanitation services, which started with the first Strategic Water Supply and Wastewater Sanitation Plan covering the period from 2000 to 2006, and the second plan covering the period from 2007 to 2013. Building on the results of the first plan, the second plan aimed to ensure that 95 per cent of the population had access to public water provision and 90 per cent to sanitation by 2013. As for services management, the second plan aimed for full cost recovery and increased participation of private companies in the sector.

18. The most recent strategic plan covers the period up to 2020. The Special Rapporteur welcomes the fact that the 2020 plan highlights the recognition of the human rights to water and sanitation by the United Nations General Assembly in 2010.[10] The 2020 plan focuses on efficient management of water resources and on issues such as restructuring the sector and financial resources. The Special Rapporteur looks forward to the progress that Portugal aims to achieve in implementing the 2020 plan, particularly in terms of guiding public policy on quality services at a sustainable price. Furthermore, the Special Rapporteur welcomes the fact that the 2020 plan involves a monitoring group composed of various stakeholders, including local government, Águas de Portugal (the State-owned holding company that provides water and sanitation services), civil society and other monitoring groups to facilitate the right to participation for stakeholders and to disseminate information relating to policy formulation.

19. The Special Rapporteur notes that no information on the policy framework of the two autonomous governments has been made available to him.

IV. Institutional framework

A. Institutional transformation

20. After the 1980s, Portugal faced the need to develop standards on drinking water and sanitation services provision. The Portuguese water and sanitation sector reform started in 1993 and resulted in a complex institutional architecture within which multiple actors have different roles.

21. In 1993, Portugal had an underdeveloped water and sanitation infrastructure with 81 per cent of households in Portugal having access to public water supply systems and 68 per cent to wastewater management services. *Portugal experienced institutional fragmentation*, with several public bodies having disparate but overlapping responsibilities in relation to

[10] See www.apambiente.pt/_zdata/Politicas/Agua/PlaneamentoGestao/PENSAAR2020/PENSAAR2020_Relatorio_Vol2.pdf.

access to water and sanitation. Hundreds of small-scale municipalities that carried out the role of water service provider were unable to obtain funding or implement the required investment to improve their services. Furthermore, there was a lack of comprehensive, reliable information to support strategic development, policymaking and decision-making, both at the central and local levels. That subsequently led to a gap in the national strategy to address the issue of access to water and sanitation. In response to those challenges, Portugal has implemented reform in its water sector, which has resulted in institutional and legislative changes.

I. Service management models and service providers

22. The water sector in Portugal is organized into two main levels. The first level, "em alta" or "bulk", includes the activities of water abstraction, treatment and storage, as well as wastewater treatment and disposal. The second level, "em baixa" or "retail", includes the activities of water distribution and provision to individual users, and the collection of wastewater from users.

23. Based on the two levels, the responsibility for water supply and sanitation services is shared between the central Government and the local governments of the municipalities. At the bulk level, there are 11 water service providers and 9 sanitation service providers. Under Decree-Law No. 72/2016, the service provisions at the bulk level are under the jurisdiction of the State through the multi-municipal systems. Under Decree-Law No. 90/2009, at the retail level, there are 301 water service providers and 257 sanitation service providers whose activities fall under the jurisdiction of the municipalities.[31] The provision of water and sanitation services, including the ownership of assets, is by law a public responsibility. However, private operators can participate in drinking water supply and sanitation services through a concession contract to manage the service for a given period of years or by participating in the share capital of municipal companies.

24. In addition to the level at which the water and sanitation service providers engage, the providers are distinguished according to different management models. At the retail level, under Decree-Law No. 194/2009, water provision can follow one of four models: (a) direct management, which can be provided by municipal or inter-municipal utilities; (b) delegated management, where a public company is in partnership with the State; (c) delegated management by a municipal company (with public or mixed capital); and (d) management through concession to private companies. Direct management is the most widespread, covering approximately 70 per cent of all municipalities and about 52 per cent of the total population of continental Portugal. The other three models are predominantly found along the Portuguese coast or in the large urban centres.[32] Similar to water supply, sanitation services are provided using models including direct management, delegated management and management through concession. Direct municipal management is also the most common, providing services to 75 per cent of municipalities and almost 59 per cent of the population of continental Portugal.[33]

25. At the bulk level, multi-municipal systems (regional monopolies) were created, transferring powers and responsibilities from local authorities and their respective management bodies to State-owned public companies, in which municipalities own 49 per cent and the national State owns a stake of 51 per cent through the State-owned holding company, Águas de Portugal. Águas de Portugal was set up in 1993 in order to overcome the problems facing the water and sanitation sector at the time, namely, the fragmented system that engendered a lack of capacity to share expertise and know-how. Through its subsidiary companies, Águas de Portugal designs, builds, operates and manages water supply and sanitation systems in liaison with partner municipalities. In addition to its commercial activity of provision of bulk water, which covers 80 per cent of bulk water in Portugal, the work of Águas de Portugal also concerns public policy aspects of water services. In that regard, the Special Rapporteur reiterates guiding principle 4 of the United

[31] See www.ersar.pt/wp-content/uploads/2016/12/RASARF2016_Volume_1.pdf, p. 45.
[32] Ibid., p. 49.
[33] Ibid., p. 55.

Nations Guiding Principles on Business and Human Rights, which indicates that States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State by requiring human rights due diligence.

26. Another model is where bulk and retail level services are directly managed at the municipal level. The Setúbal Region Intermunicipal Water Association, a regional association with eight municipalities as members,[14] coordinates and promotes projects relating to water abstraction and transportation and distribution of bulk water in the Setúbal peninsula. One of its main aims is to create the Intermunicipal Bulk Water System for the region. The situation in that region is emblematic of the relationship between the various institutional actors in the water sector in Portugal. For instance, the Setúbal Region, through the Intermunicipal Water Association, has refused to join the model in which Águas de Portugal is in charge of the water provision at the bulk level. The Special Rapporteur noted that the municipalities of the region were not comfortable with the decision-making process of the bulk-level management, the lack of transparency in some decisions of the national Government and also the share of revenues in the bulk-level companies. At the same time, the Special Rapporteur expresses concern that those municipalities that opt out from the above-mentioned model are discriminated against when it comes to receiving funds from the central Government and the European Union. The Special Rapporteur notes that only one municipality in the region, that of Almada, obtained funds from the European Union.

27. There is an additional model in which both bulk and retail level water service provisions are operated under the delegated management model. For instance, the Empresa Portuguesa das Águas Livres, a State-owned service provider, operates at the bulk level in the greater Lisbon area and both at the bulk and retail levels in the city of Lisbon.[15]

2. Regulation

28. In continental Portugal, the Water and Waste Services Regulation Authority was established in 2009, aiming to regulate the provision of services in terms of quality and economic performance, as well as addressing consumer complaints. The regulatory responsibilities of the Authority were extended to include defining the principles of tariff regulation, notably demanding economic and financial cost recovery, maintaining affordability of services, including through social tariffs, promoting equity in tariff structures and promoting transparent tariff setting procedures.[16]

29. In Azores, the Water and Waste Services Regulation Authority for Azores is operational and is in charge of drinking water quality surveillance and other activities relating to water, sanitation and solid waste management.

30. Throughout his visit, the Special Rapporteur learned about the work of the Water and Waste Services Regulation Authority in relation to standard-setting, periodic monitoring of the quality of water and sanitation services, and recommendations for water and sanitation providers. The Special Rapporteur acknowledges the work of the Regulation Authority as a good practice and a reference model for regulation within and outside of Europe. However, in his opinion, there is room for improvement by introducing some elements of the human rights to water and sanitation in regulation in a more appropriate way. In particular, affordability is a normative content that requires more attention from the Regulation Authority. On the one hand, it is necessary to establish an adequate indicator for monitoring and reporting the actual status of affordability in the access of services. The current indicator, which considers the average income in the municipalities, is far from capturing the economic burden on the poorest in the population and those in vulnerable situations. On the other hand, with a view to protecting those who are economically unable to pay for water and sanitation services, guidance for the water and sanitation service providers should be issued and mechanisms for the protection of those groups should be implemented. Furthermore, the Special Rapporteur finds that a closer look at policies concerning disconnection of water and sanitation services is necessary.

[14] Alcochete, Almada, Barreiro, Moita, Palmela, Seixal, Sesimbra and Setúbal.

[15] See www.esgra.pt/wp-content/uploads/2016/12/RASARP2016_Volume_1.pdf, p. 45.

[16] See Decree-Law No. 277/2009, which was subsequently replaced by Law No. 10/2014.

31. Regulators, as part of public authorities, must act in accordance with the provisions of the international human rights treaties to which Portugal is a party. Their role also includes ensuring human rights compliance on the part of the municipalities and other entities that they regulate (see A/HRC/36/45). The Special Rapporteur urges the national regulator to ensure that its own policies, procedures and activities comply with the international human rights obligations of Portugal.

3. Complexity in the Portuguese water sector

32. During his visit, the Special Rapporteur observed several layers of tensions within the Portuguese water and sanitation sector. He noted that the institutional reform in the water sector that has been implemented in Portugal over the past two decades is facing challenges due to those tensions, especially with regard to the decision-making process involving different institutional actors. All actors that are part of the institutional framework of the water and sanitation sectors are tasked with key roles and responsibilities in respecting, protecting and fulfilling the human rights to water and sanitation. Therefore, tensions among those actors may have a negative impact on how they carry out their operations and their level of success in reaching their goal of providing water and sanitation services to the population. That in turn may affect or otherwise harm the enjoyment of the human rights to water and sanitation. The Special Rapporteur highlights the fact that such tensions could become the root cause of situations that require attention under the human rights framework. In particular, the Special Rapporteur notes that the affordability of water and sanitation for the most vulnerable populations, including the "new poor", is a relevant representation of that situation.

33. Firstly, the Special Rapporteur observed that the tensions between the roles of the bulk providers and of those responsible for retail provision had been present since the implementation of the reform and that they remain strong. The resistance of a number of municipalities to integrate into the bulk provision system has resulted in the coexistence of different models for the provision of water supply services. The Special Rapporteur finds that, while that diversity is not necessarily problematic, it seems to create institutional asymmetries, different rights for different providers and, most significantly, different conditions of access to the services by the population. The Special Rapporteur notes that the differentiated treatment of providers affected municipalities' ability to access funds from the central Government and the European Union, thus negatively affecting the expansion of the infrastructure of the water and sanitation network. Another complaint that the Special Rapporteur came across is that some municipal authorities felt they did not have a free and independent voice in decision-making processes regarding the bulk provision of water and sanitation even when they are shareholders in the bulk provider corporation.

34. One aspect of those tensions was the resistances of municipalities, mainly in joining the bulk-level providers. In addition to the situation identified in the Setúbal Region, the Special Rapporteur visited the region of Porto and observed how, at times, small municipalities negatively viewed the model of splitting the provision in bulk and retail. In one of the sites visited, local authorities explained that the municipality refused to join the bulk-level service provider and were proud of managing a municipal service for water and sanitation, both at the bulk and the retail levels. In another municipality, the Special Rapporteur observed the discontent of the local authorities after they had joined the bulk-level provider the previous year, as the agreed investments had not been implemented and there was an increase in tariffs, which had not been stipulated in the contract.

35. A second layer of tension was observed between local authorities and the central Government, in particular, the degree of centralization or decentralization of water provisions, as well as the roles of government at both the central and the local levels. The Special Rapporteur emphasizes that institutionalized and constructive cooperation on human rights between the central and local governments can have a positive impact on the level of implementation of the international human rights obligations of the State (see A/HRC/30/49, para. 21). The primary role to respect, protect and fulfil human rights lies with the State, that is to say, the central Government, local authorities and the autonomous regions of Azores and Madeira. The Special Rapporteur notes the need for the Government of Portugal to stipulate explicit legal provisions that oblige local authorities and the

autonomous governments to realize the human rights to water and sanitation. Improved communication and collaboration between all levels of government will lead to improved human rights results.

36. Another dimension of tension was observed around the independence of the Water and Waste Services Regulation Authority, whose role was at times challenged by the central Government and some local authorities. While the central Government wishes to play a larger role in key decisions, which may be essential for reconciling water policy with social and public policy, local authorities argued that their autonomy in providing essential water and sanitation services was sometimes undermined. In meetings with the central Government, the Special Rapporteur heard the view that the pricing system should be changed in order to ensure more equitable payment between people living in smaller communities, who were paying more due to higher retail tariffs, and people living in larger cities who potentially pay less for water and sanitation services. He also heard the view that the Ministry of the Environment should play a role in tariff setting, together with the Water and Waste Services Regulation Authority.

37. Given the above-mentioned tensions, the Special Rapporteur urges the Government of Portugal to conduct a comprehensive assessment of the institutional arrangements from a human rights perspective and with the active, free and meaningful participation of all stakeholders. The institutional framework of the Portuguese water sector and possible reforms, for instance, the 2016 National Commitment for the Sustainability of Public Water Services (see paragraph 58 below), need to take into account equality and non-discrimination in the enjoyment of the human rights to safe drinking water and sanitation, ensuring sustainability of services.

B. Private sector participation

38. Until the 1990s, Portuguese legislation limited the participation of private companies in the water sector. Subsequently, the Portuguese water sector has been reshaped by a legal framework that affirmed privatization as a guiding principle of water provision in Portugal (Decree-Law No. 372/93). During the 1990s, the first generation of concessions mainly placed the burden of investment in infrastructure on the conceding entity. The participation of private companies grew during the 2000s, which led to the second generation of concessions, in which investments in infrastructure was the responsibility of the concessionary company.

39. In 2013, 19 public-private partnership municipal water concessions out of 27 in total were audited by the Portuguese Court of Auditors (Tribunal de Contas), a high court that is responsible for external oversight and auditing of the use and management of public expenditure. The focus of the review was the regulation and management of concessions for water supply services at the retail level. The Court aimed to examine the activity of the Water and Waste Services Regulation Authority as the regulator of the concession, identify the processes of contract revision, identify public spending involved in each concession and assess the effectiveness of concessions in terms of the quality of services.

40. Among its conclusions, in its first report of March 2014, the Court concluded that the majority of concessions consistently benefited the private sector to the detriment of municipal budgets and individual consumers. That was due to a lack of contractual provisions that would pass the risks of financial non-sustainability (such as those relating to the market, tendering, finances, construction and exploitation) on to the private parties, hence leaving those risks to be assumed by the public partner.[17] Furthermore, some contracts included clauses that guaranteed the private partner coverage from financial risks or even from operational risks resulting from increasing maintenance costs.

[17] *Tribunal de Contas, 2014, p. 8. Available from* http://www.tcontas.pt/pt/actos/rel_auditoria/2014/2s/audit-dgtc-rel003-2014-2s.pdf.

41. Certain contractual clauses and legal requirements potentially favour private companies, particularly for termination or amendment of concession contracts.[18] For instance, Decree No. 194/2009 establishing the judicial regime of municipal services for water supply, sanitation and solid waste management (art. 54) stipulates that the municipality can demand to lower tariffs when the internal rate of return to the private stakeholders reaches twice the amount established as a base profit in the concession contract. It was brought to the Special Rapporteur's attention that municipalities often lacked the technical and negotiation skills required to defend their financial interests, including those of individual users. The Special Rapporteur is concerned about the unbalanced bargaining power between the private companies and the municipalities and the negative impact it has on the affordability of water and sanitation.

V. Human rights to water and sanitation in Portugal

A. Accessibility

1. Access to water and sanitation

42. At the beginning of the 1990s, 89 per cent of the population had access to piped water supply services.[19] Coverage increased to 95 per cent in 2011, reaching the goal identified in the second Strategic Water Supply and Wastewater Sanitation Plan. According to the 2011 census, which includes the autonomous regions of Azores and Madeira, 3,565,990 housing units had access to a water supply from a public network, and 405,843 units from individual solutions. It was reported that 22,294 housing units did not have any water supply. A more recent survey by the Water and Waste Services Regulation Authority, in 2015, showed that 96 per cent of housing units in continental Portugal had access to services from the public water supply system, with most of the remaining situations solved through individual solutions, such as a private well or borehole.

43. The Special Rapporteur notes that, in addition to connections to piped network and communal or shared facilities, individual on-site solutions may be acceptable (see A/70/203, paras. 69-71). At the same time, he emphasizes that the State has the obligation to ensure that individual solutions meet all the normative content of the human rights to water and sanitation. For instance, the water from individual solutions needs to be accessible continuously and the quality of water from wells or boreholes must meet the official standards and must be protected from animals and other sources of contamination.

44. Portugal also showed improvement in the area of sanitation. There was an increase in access to public sewerage systems from 60 per cent in 1993 to 83 per cent in 2015. The majority of the remaining situations were solved through individual solutions such as septic tanks. More specifically, according to the 2011 census, 3,931,508 housing units in Portugal had flushing toilets, while 26,609 housing units did not contain a toilet. The census also showed that 3,080,452 households had access to a sewerage system from the public network, while 20,257 households did not have access to any sewerage system.

45. The Special Rapporteur underscores that those individual solutions for sanitation may be acceptable (see A/70/203, paras. 56-60), if they are well constructed and maintained. The State should ensure the proper protection of human health and the environment, as well as affordable costs for latrine and tank maintenance.

46. The Special Rapporteur acknowledges the impressive progress made by Portugal, often referred to as "the Portuguese miracle", in the water and sanitation sector. He congratulates Portugal on that achievement, but at the same time highlights the fact that there are still challenges in order for the Portuguese miracle to be complete. For instance, despite the reported wide coverage of sanitation services, the Special Rapporteur learned

[18] Ibid., paras. 36 and 44.

[19] United Nations Children's Fund (UNICEF) and World Health Organization, "Progress on sanitation and drinking water: 2015 update and MDG assessment", 2015, annex 3, p. 70.

that there are still whole population groups that do not have access to those services. In the case of the population living in *ilhas*[20] in Porto, the Special Rapporteur reiterates the concern of the Special Rapporteur on the right to adequate housing regarding their inadequate living conditions, particularly the ad hoc sanitation facilities that are sometimes outside the homes or without doors for privacy or a place to wash (see A/HRC/34/51/Add.2, paras. 45-48). Similar concerns relate to the situation of the Roma population, such as the people he encountered in Amadora. The Special Rapporteur encourages the municipalities to provide support for the construction and maintenance of solutions for sanitation for those who are in vulnerable situations, including people living in informal settlements and the homeless.

47. Furthermore, for both water and sanitation, the disparity between urban and rural areas is still high. According to the 2011 census, for every one housing unit in an urban area that did not have access to a water supply, a sewage system and a toilet, there were three households in a rural area.

2. Situation in educational and public institutions

48. Water and sanitation services should be accessible in public institutions such as health facilities, educational institutions and workplaces. Decree-Law No. 243/86 requires that access to water and sanitation services be provided in schools, health facilities, prison facilities and, in general, all public buildings. It specifically requires that sanitary facilities possess at least one fixed toilet (or Turkish squat style for men) per floor or per 25 male workers and 15 female workers. It further requires that sanitary facilities must have running water and be connected to a sewerage system or adequate septic tank and be equipped with non-irritant soap and, ideally, automatic hand-dryers or paper towels.

49. The Special Rapporteur notes the assessment of the Ombudsman's Office regarding the improved sanitary facilities in prisons and juvenile detention centres. Over the past few decades, there have been positive developments in prisons in Portugal in terms of water supply and sanitation, both in cells and in other places of confinement, with the complete eradication of the use of the "toilet bucket".

B. Quality

50. The normative content of the human right to water requires water to be of quality and safe, so that its consumption and use do not adversely affect human health. Sanitation services must be hygienic and prevent the contact of faeces with humans, animals and insects.

51. In 1993, the drinking water quality levels in the country were low, with only 50 per cent of households with access to controlled drinking water of good quality. Following the reform in the water sector, there was a significant improvement in the quality of drinking water, with 99 per cent of water complying with the national standards in 2015.[21]

52. The regulatory system for drinking water quality in Portugal is established under Decree-Law No. 306/2007,[22] which transposes European Drinking Water Directive 98/83/EC. The law is intended to protect human health from the effects of possible contamination and establishes the criteria for managing a public drinking water supply system. Furthermore, it defines the competence of various actors in relation to water quality surveillance, including water service providers, the Water and Waste Services Regulation Authority and the health authorities. The Water and Waste Services Regulation Authority implements the mechanisms and tools to ensure compliance with the legal requirements by

[20] *Ilhas* are a unique form of housing found only in Porto. Established in the nineteenth century for workers, the miniature homes, measuring on average 16 m^3, house some of the poorest families in Porto. Hidden from view, the *ilhas* are located down narrow lanes. There are 957 of those housing arrangements scattered throughout Porto.

[21] See www.ersar.pt/en/the-setor/sector-report.

[22] That Law replaced Decree-Law No. 243/2001.

compelling all drinking water suppliers to develop a drinking water quality control plan. The role of the health authorities is to undertake sanitary surveillance in addition to the drinking water operators by performing monitoring and official quality control. The health authorities are also in charge of conducting risk analysis in cases of non-compliance, defining any risks associated with the protection of human health and the procedures to minimize or eliminate those risks.

53. In relation to the possible health risks relating to consumption of tap water, Portuguese law requires that every provider has 24 hours to communicate any non-compliance using the Water and Waste Services Regulation Authority portal tool, allowing the Regulation Authority and the health authorities to proceed with an immediate evaluation. Besides registering non-compliant cases, the provider has to register the causes, the remedial actions and the results of verification analyses to evaluate the efficacy of remedial actions.

54. Furthermore, the Ministry of Health manages epidemiological surveillance based on electronic online software for national notifiable infectious diseases in 85 per cent of Portuguese health-care centres and hospitals.[23] The national epidemiological surveillance system facilitates investigation procedures relating to water-related disease and the identification of causalities. Following a notification from the system, local health authorities conduct epidemiological investigation for every case of water-related disease and register related information in the system.

55. While the Special Rapporteur recognizes the progress made in terms of the quality of drinking water and the monitoring processes, he nonetheless wishes to highlight the fact that there is still a gap to be filled. During his visit, the Special Rapporteur witnessed the pride of some officials with regard to the recent progress in water quality control, asserting that Portugal "currently has no more water-related diseases". That statement, however, contradicts data from the epidemiologic surveillance system, which shows a number of remaining cases of diseases that may be linked to drinking water supply. Furthermore, the statement is not compatible with the situation of almost all countries in the world, where cases of water-borne disease, particularly diarrhoea, are identified from time to time. The Special Rapporteur notes that the assessment of a good performance of the service providers in ensuring safe drinking water quality should not be a reason for the Government to neglect the rigorous water quality and epidemiological surveillance. That is relevant both to areas supplied by networked systems that risk facing occasional outbreaks and to individual solutions that are not usually monitored or supported by the State.

56. In addition, the Special Rapporteur observed that Portugal lacks a proper mechanism for providing access to information on drinking water quality for users. Although information is available on websites, he recommends setting up a more proactive system, for instance, including regular information on water bills, as the Water and Waste Services Regulation Authority has been recommending since 2010.

C. Affordability

57. Affordability, as a human rights criterion, requires that the use of water, sanitation and hygiene facilities and services is accessible at a price that is affordable to all people. Paying for those services must not limit people's capacity to acquire other basic goods and services guaranteed by human rights, such as food, housing, health, clothing and education. Affordability standards must be considered together with standards for an adequate quantity and quality of water and sanitation to ensure that human rights standards are met (see A/HRC/30/39, para. 25).

58. The most recent annual report of the Water and Waste Services Regulation Authority notes that on average, drinking water service charges represent 0.4 per cent of the average household disposable income, whereas sanitation service charges represent 0.3 per cent. In relation to standards regulating the affordable charges for water and sanitation

[23] See www.dgs.pt/servicos-on-line1/sinave-sistema-nacional-de-vigilancia-epidemiologica.aspx.

services, the Special Rapporteur reiterates that it is not appropriate to set a generally applicable affordability standard at the global or national levels, and much less for one to be set by one stakeholder in the water and sanitation institutional framework. Any such standard would be arbitrary and could not reflect the challenges people face in practice and the context in which they live, including how much they need to spend on housing, food and realizing other human rights. The affordability of water and sanitation services is highly contextual, and Portugal should therefore determine affordability criteria at the national and local levels, adhering to human rights principles, particularly in terms of participation (see A/HRC/30/39, para. 28). The Special Rapporteur emphasizes that States and water and sanitation providers should set policies that reconcile affordability and financial sustainability as part of their financial management. In Portugal, the Special Rapporteur observed that financial sustainably in relation to affordability is by far the priority concern of the governmental actors in the water sector. In 2016, the Minister of the Environment presented the National Commitment for the Sustainability of Public Water Services, which aims to strengthen and harmonize the mechanisms relevant to ensuring affordable water services by, for instance, setting a minimum threshold for access to water services, and establishing special tariffs.

59. The normative content of affordability should be a priority in the agenda of the Portuguese water and sanitation sector and mechanisms should be established to identify the specific needs of groups that live in vulnerable situations, including rural populations, the homeless, the Roma population and the so-called "new poor".

1. Tariff-setting

60. Setting tariffs for retail water and sanitation services remains a municipal decision in Portugal. However, the decision is not entirely discretionary and has to comply with applicable legal and regulatory provisions. Non-binding tariff regulations regarding the water tariff in Portugal are defined by the regulator, the Water and Waste Services Regulation Authority in continental Portugal, and in Azores, by the Water and Waste Services Regulation Authority for Azores. In continental Portugal, the Water and Waste Services Regulation Authority issued a recommendation in 2009 relating to price regulations, asking water utilities to continue to reflect, in tariff structures, the "principle of economic accessibility, according to which the tariffs should consider the financial capacity of users, contributing to the progressive universal access to water services". The Water and Waste Services Regulation Authority for Azores also submitted a recommendation for a tariff regime in that region, which contained recommendations that would facilitate the implementation of social tariffs for disadvantaged or large families.[24]

61. Furthermore, those non-binding recommendations have emerged in parallel to legislation that reinforced the cost recovery principle in the water and sanitation sector. For instance, the Water Law (Law No. 58/2005) and the Decree-Law on the economic and financial framework of water resources (Decree-Law No. 97/2008) provide that the tariff scheme for water services ensures the gradual recovery of the initial investment and new investments in expansion, modernization and maintenance of the infrastructure.

62. That leads to the situation where investment is necessary but often affects the capacity of the water providers to ensure and uphold social responses to situations of social and economic need. The Special Rapporteur heard testimonies that the cost recovery principle adds pressure for an adjustment in tariffs by water utilities, which has a potentially negative effect on economic accessibility on the part of consumers.

2. Special tariffs

63. Measures that allow low-income users to access water services exist in Portugal. The 2017 State Budget Law, approved after the Special Rapporteur's visit (Law No. 42/2016), authorizes the Government to establish a legal regime for the automatic attribution of a social tariff for the provision of water services to lower income consumers, namely to

[24] See http://www.azores.gov.pt/NR/rdonlyres/AC7FEBE0-8FF-4B35-B8DF-4EDC8D2C2AE7/907603/Recomenda%C3%A7%C3%A3otarif%C3%A1ria2.pdf.

persons benefiting from old-age social pensions, solidarity supplements for the elderly, social integration incomes, unemployment social benefits, family allowance and disability social pensions. Consumers with an annual income under €5,808 are also eligible to benefit from the social tariff. The Special Rapporteur welcomes the inclusion of that provision in the annual budget. It is in line with the need to uphold the dignity of those who would otherwise have to request their inclusion in the system and will increase the number of people who will benefit from the social tariff.

64. However, the Special Rapporteur notes that the automatic attribution of the social tariff should be complemented by implementation measures at the central and local government levels and urges the Water and Waste Services Regulation Authority, the Ministry of the Environment and other relevant institutions to strongly advocate for that to take place. Furthermore, he notes that the implementation of the automatic attribution of the social tariff depends heavily on the flow of personal data, such as individuals' incomes, between the social security services, the tax and customs authority and the general department of local municipalities. The Special Rapporteur looks forward to receiving information regarding the coverage and application of the social tariff and on how the mechanism is developed, taking into consideration the need to balance on the one hand, the use of personal data in order to automatically apply the social tariff and on the other hand, individuals' right to privacy regarding their personal data. Additionally, the Special Rapporteur stresses the importance of disseminating information regarding existing practices, policies and resources that promote economic access to water and sanitation.

65. Another type of special tariff is the family tariff, which is aimed at ensuring that the higher consumption of water resulting from the size of the household is not billed at higher levels. The application of the family tariff varies from provider to provider. For the Empresa Portuguesa das Águas Livres, family units consisting of five or more people are eligible for the family tariff.[25] In order to benefit from the family tariff, consumers are required to present either their annual income tax declaration showing proof of household size or their Large Family Card. According to the definition applied by the Portuguese Large Family Association (Associação Portuguesa de Famílias Numerosas), such families have at least three children.[26] The Special Rapporteur recommends flexibility in interpreting and applying the size of family as in some cases, due to financial vulnerability, one household may be occupied by five or more adults.

66. While the majority of the Portuguese population enjoys affordable water and sanitation services, the Special Rapporteur was informed that the so-called "new poor" pay high water tariffs in comparison to their income. For instance, some population groups have experienced sudden salary cuts or drops in pensions, or have lost their jobs. Those sudden changes in the financial status of the "new poor" have resulted in their inability to pay for their water services, while at the same time they do not qualify for the social tariff for water services, which are based on the tax return from the previous year. The Special Rapporteur heard testimonies of adults who, during the financial crisis, were unable to stay in their own homes and had to move in with their parents. In such cases, where family tariffs applied only to families with children, they were not qualified to benefit from family tariffs. The Special Rapporteur emphasizes that social tariffs for water and sanitation services should be flexible and should be adapted to unforeseen situations.

3. Disconnection in case of incapacity to pay

67. The affordability of water and sanitation services and disconnections are inextricably linked. In many instances, the failure to pay for services leads to disconnection. Disconnection of services on the grounds of economic incapacity is a retrogressive measure and constitutes a violation of the human rights to water and sanitation, according to the Committee on Economic, Social and Cultural Rights (see the Committee's general comment No. 15 (2002) on the right to water, para. 44 (a)). Disconnections are only permissible if it can be shown that households are able to pay but are not paying.

[25] See www.epal.pt/EPAL/en/menu/customers/tariff/special-tariffs /special.

[26] See www.apfn.com.pt/faqs.php.

68. In Portugal, it is legal to disconnect water services if adequate procedures are followed. In the case of disconnection due to late payment, the service provider must inform the user in writing at least 20 days prior to the scheduled disconnection date.[27] In the prior written notice, in addition to justifying the reason for the suspension of services, the provider must inform the users of the means at their disposal to avoid disconnection (Law No. 23/96, art. 5). When the service has been suspended due to non-payment, several water providers offer options for debt settlements, including payment by instalments.

69. According to analysis carried out by the Water and Waste Services Regulation Authority, the great majority of disconnections are not the result of unaffordable bills, but other factors, such as users moving to another address and failing to cancel the service, or forgetting to pay, making disconnection legally appropriate. A pilot study conducted by the Water and Waste Services Regulation Authority in 2015 involving the municipalities of Loures, Mafra and Odivelas aimed at understanding more about disconnections and the reasons for late payments, taking into consideration the specific legal, economic, social and technical conditions in each context. According to the study, the main reasons were not linked to the affordability or otherwise of the water bills.

70. Nonetheless, the Special Rapporteur notes that in several areas, particularly in informal Roma settlements, there have been cases of disconnection of water services in the past. Given the lack of clarity about the real reasons for disconnection, the Special Rapporteur recommends that the Government conduct official studies and surveys into the reasons for non-payment, with a view to identifying the households that are financially incapable of paying for their water and sanitation services. Furthermore, the Special Rapporteur urges Portugal to establish legal procedures to prohibit disconnection of water and sanitation services due to economic inability to pay.

D. Maximum availability of resources

71. The human rights to water and sanitation must be realized progressively, using the maximum available resources. That means that Portugal needs to make specific budget allocations for water, sanitation and hygiene, including menstrual hygiene management. Often forgotten in the human rights to water and sanitation is the cost of construction and maintenance of onsite sanitation and hygiene promotion, including menstrual hygiene management in schools and other public institutions. According to the information received from the Government, in 2015 approximately $25.9 million was available for water abstraction and distribution and $33.9 million for collection and treatment of wastewater.

72. In Portugal, the issue of ageing infrastructure is addressed in Decree-Law No. 194/2009, which obliges water services operators serving more than 30,000 inhabitants to maintain a programme for infrastructure asset management. Furthermore, the Water and Waste Services Regulation Authority recently adapted its index for measuring the implementation of strategic asset management by water and wastewater services operators with a view to better assessing how operators are dealing with ageing infrastructure.[28] Access to public funding, namely, funding from the European Union, depends on a regulatory assessment based on indicators that give high priority to infrastructure rehabilitation.[29]

73. In a decentralized structure such as the water and sanitation sector in Portugal, it is critical that the budget allocation to local authorities allows them to provide the support necessary to sustain the maintenance of water and sanitation infrastructure and to help those who cannot afford water and sanitation services. The Special Rapporteur recommends that

[27] The mandatory number of days between giving the user written notification and service interruption increased from 10 days in 2008 (Law No. 12/2008) to 20 days in 2013 (Law No. 10/2013).

[28] See "Guia técnico 21: Desenvolvimento e implementação de processos de gestão patrimonial de infraestruturas", ERSAR, Lisboa. Available from www.ersar.pt/pt/publicacoes/publicacoes-tecnicas/guias.

[29] See www.apambiente.pt/_zdata/Politicas/Agua/PlaneamentoeGestao/PENSAAR2020/PENSAAR2020_Relatorio_Vol2.pdf, p. 37.

Portugal conduct a study to analyse its own situation, particularly to assess whether the country is investing its maximum available resources to progressively realize the human rights to water and sanitation, without discrimination.

VI. Population groups in vulnerable situations

74. During the visit, the Special Rapporteur observed the situation of the Roma population and people living in informal settlements. While the majority of the Portuguese population enjoys near universal access to water and sanitation, the situation of access to water and sanitation for those groups is of great concern.

75. The Roma population was granted Portuguese citizenship under the Constitution of 1822. A significant percentage of the Roma population living in Portugal, which is estimated to be between 40,000 and 60,000 people, still has no access to basic goods and services.[30] The results of the 2011 Roma pilot survey carried out by the European Union Agency for Fundamental Rights indicate that the Roma community suffers particularly from lack of access to improved services such as piped water. While visiting Roma populations in Amadora and Vidigueira municipalities, the Special Rapporteur observed their unacceptable access to water and sanitation services, which constitutes a violation of the minimum principles of the human rights to safe drinking water and sanitation. That situation is incompatible with the progress that has taken place in the water sector in Portugal, the so-called "Portuguese miracle".

76. The Special Rapporteur emphasizes that the Government of Portugal must endeavour to close the significant gap between the proportion of Roma who have access to water and sanitation and that of the rest of the population. He notes that the National Roma Communities Integration Strategy (2013-2020) does not include any reference to drinking water and sanitation. The Special Rapporteur emphasizes that Portugal should acknowledge that its national Roma population experiences challenges in accessing drinking water and sanitation. The National Roma Communities Integration Strategy must include references to access to safe drinking water and sanitation and to the measures that need to be taken in order to ensure such access.

77. The human rights to safe drinking water and sanitation mean that all nationals must have access to drinking water and sanitation. Water and sanitation services in Portugal come under the purview of the municipal authorities. A decentralized system relying on the municipal authorities to provide water and sanitation services may face challenges relating to the fact that information is gathered at the national level, which may well lack, for instance, disaggregated information according to wealth level, migratory status, ethnic groups and other grounds of discrimination. The lack of disaggregated information may have an impact on the formulation of national policies in which individuals and communities in vulnerable situations are not included and monitored. In that context, the Special Rapporteur encourages further cooperation and exchanges of information between the central Government and the local governments.

VII. International development cooperation

78. The Special Rapporteur wishes to highlight the work of Águas de Portugal in the area of technical cooperation with developing countries. One of the missions of Águas de Portugal International is to work with developing countries, particularly Portuguese-speaking African countries, by transferring know-how, methodology and practices. Águas de Portugal International provides services at the international level in the water supply and sanitation sectors, capitalizing the know-how and technological solutions of the Águas de Portugal Group. Those services include water supply and sanitation management and operation and maintenance of infrastructures.

[30] See http://ec.europa.eu/justice/discrimination/files/roma_portugal_strategy_en.pdf, p. 13.

79. Another entity that is involved in the area of cooperation is the Portuguese Water Partnership, a network of organizations that aim to develop synergies and maximize potential for the development of the water sector in the world, promoting the construction and consolidation of alliances and partnerships between national institutions and all nations engaged in sustainable water use and enhancement of water resources. The Partnership brings together various stakeholders from water service providers, research centres, civil society, professional associations and members of scientific societies.

80. Non-State actors such as Águas de Portugal and the Portuguese Water Partnership play an important role in the area of technical cooperation in Portugal. In that connection, it is important to emphasize that even where non-State actors take an active role in development cooperation, States have an extraterritorial obligation to ensure that all standards and policy relating to technical cooperation are in line with human rights standards and guide the activities of non-State actors (see A/71/302, paras. 10-12).

VIII. Conclusion and recommendations

81. The Special Rapporteur finds that Portugal has undoubtedly achieved outstanding progress in the water and sanitation sector over the past decades, which is largely recognized worldwide. Portugal now enjoys almost near universal water coverage and the coverage of sanitation services, although at a lower rate than water services, has also shown signs of progress. There has also been an impressive improvement in the quality of drinking water and wastewater treatment. The Special Rapporteur commends all the stakeholders for that success. However, his assessment of the current situation through the human rights lens shows that the work has yet to be finished in order for the so-called "Portuguese miracle" to be complete. In that context, the Special Rapporteur notes that certain normative content of the human rights to water and sanitation are reflected in legislative and policy frameworks and are observed in regulation and service provisions in Portugal. However, he underscores that the human rights perspective includes all aspects of normative content of the human rights to water and sanitation as well as human rights principles. In that respect, he encourages Portugal to continue its efforts to implement its obligation in terms of the human rights to water and sanitation in a holistic manner. He emphasizes that realizing the human rights to water and sanitation for all Portuguese citizens, including those in vulnerable situations and residents of the autonomous regions, is a cross-cutting issue for realizing other relevant human rights.

82. In that connection, the Special Rapporteur recommends that the Government of Portugal:

(a) Improve coordination, dialogue and exchange of information between all levels of government in relation to access to water and sanitation;

(b) Adopt legal provisions that recognize the human rights to water and sanitation at the national level and in particular, recommends that the parliament approve the bill providing for legal recognition of the human rights to water and sanitation at the national level;

(c) Stipulate explicit legal provisions that oblige local authorities and the autonomous governments of Azores and Madeira to respect, protect and fulfil the human rights to water and sanitation

(d) Adopt legislative measures to prohibit disconnections of water and sanitation services owing to an inability to pay;

(e) Adopt legislative measures on affordability of access to water and sanitation services, stipulating that all individuals are provided with an affordable and reliable service that is adequate for basic human needs in the context of the national, local and autonomous government levels, reflecting the challenges people face in practice and the contexts in which they live;

(f) **Develop and undertake a comprehensive assessment of the institutional arrangements in the water and sanitation sector from a human rights perspective and take measures to ensure that current tensions in the sector do not jeopardize the realization of the human rights to water and sanitation for any of the Portuguese population;**

(g) **Incorporate the principles of equality and non-discrimination in the enjoyment of the human rights to safe drinking water and sanitation, ensuring sustainability of the services in the institutional framework of the Portuguese water sector and possible future reforms;**

(h) **Carefully monitor the processes by which concessions are granted for water and sanitation services in order to reduce the financial burden and risks for municipalities;**

(i) **Develop and issue guidelines for water and sanitation service providers concerning disconnection of water and sanitation services with a view to protecting those who are economically unable to pay for those services, and establish protection mechanisms for those groups;**

(j) **Develop a comprehensive method for disaggregation of data on water and sanitation access by wealth level, migratory status, ethnic group and other grounds of discrimination, in order to facilitate the development of focused policies for the proper protection of the populations most in need;**

(k) **Include in the National Roma Communities Integration Strategy references to access to safe drinking water and sanitation and measures that need to be taken in order to ensure such access;**

(l) **Ensure that individual solutions meet all the normative content of the human rights to water and sanitation, ensuring that individual water solutions are provided continuously and that the quality of water from wells or boreholes meets the official standards and that water from those sources is protected from different sources of contamination;**

(m) **Develop a more proactive system to disseminate information on water quality, particularly by including it on water bills, and information on existing practices, policies and resources that promote economic access to water and sanitation;**

(n) **Provide further support to local governments in relation to the construction and maintenance of individual solutions for sanitation, particularly for those who are in vulnerable situations, including people living in informal settlements and the homeless;**

(o) **Conduct official studies and surveys on the reasons behind non-payment with a view to identifying those households that are financially unable to pay for their water and sanitation services;**

(p) **Recommend that the water and sanitation providers set policies to reconcile affordability and financial sustainability as part of their financial management;**

(q) **Recommend that social tariffs for water and sanitation services are made more flexible to adapt to unforeseen situations, such as financial crises, and that the definitions of large families that are eligible for the family tariff are made more appropriate;**

(r) **Urge the Water and Waste Services Regulation Authority and the Water and Waste Services Regulation Authority for Azores to ensure that their policies, procedures and activities comply with the international human rights obligations of Portugal;**

(s) **Urge the Water and Waste Services Regulation Authority, the Ministry of the Environment and other relevant institutions to implement and monitor the automatic application of social tariffs and to conduct further studies on the criteria**

for eligibility and the level of discounts to be provided by the social tariff with more careful evaluation;

(l) Conduct studies to assess whether Portugal is investing its maximum available resources to progressively realize the human rights to water and sanitation without discrimination;

(m) Recommend that Águas de Portugal, the Empresa Portuguesa das Águas Livres and other service providers adhere to the United Nations Guiding Principles on Business and Human Rights and perform human rights due diligence in providing water and sanitation services.

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Report of the Special Rapporteur on the human rights to safe drinking water and sanitation on his mission to Mexico

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the human rights to safe drinking water and sanitation on his visit to Mexico from 2 to 12 May 2017, which is submitted in compliance with Council resolution 33/10.

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Report of the Special Rapporteur on the human rights to safe drinking water and sanitation on his mission to Mexico*

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* Circulated in the language of submission and in Spanish only.

I. Introduction

1. The Special Rapporteur on the human rights to safe drinking water and sanitation undertook an official visit to Mexico at the invitation of the Government from 2 to 12 May 2017. The main objectives of his visit were to review the access to water and sanitation services in Mexico, to identify the main obstacles hindering the full realization of those rights and to provide recommendations for tackling those obstacles and for ensuring the full enjoyment of those human rights by everyone in society.

2. The Special Rapporteur thanks the Government of Mexico for the invitation and organization of his visit, and for the open and constructive dialogues that took place. He is grateful to the federal, state and local authorities who met with him and provided information. He met with numerous civil society organizations, community representatives and people living in urban and rural areas, and particularly thanks the civil society organizations that helped to organize essential elements of the visit and the field presence of the Office of the United Nations High Commissioner for Humans Rights for its invaluable support. The Special Rapporteur also thanks residents who told him about the challenges that they face in accessing water and sanitation services and invited him into their homes.

3. During his mission, the Special Rapporteur met with government officials from the Ministries of Foreign Affairs, the Interior, the Environment and Natural Resources, the Economy, Finance and Public Credit, Health, and Public Education, as well as local authorities in San José del Rincón, Mexico State, and in Chiapas State. He also met representatives from the Senate, the Chamber of Deputies, the Supreme Court of Justice, the National Human Rights Commission, the Human Rights Commission of Mexico City, the National Commission for the Development of Indigenous Peoples, the National Water Commission, the National Institute for Women, the Federal Consumer Protection Agency, the Federal Commission for Protection Against Sanitation Risks, the Federal Office for Legal Protection of the Environment, the Mexican Institute of Water Technology and the Mexico City water service provider (Sistema de Aguas de la Ciudad de México). The Special Rapporteur visited Iztapalapa (Santa María Aztahuacan and Lomas de San Lorenzo) and Xochimilco (San José Obrero) in Mexico City; Papantla (Emiliano Zapata) and Filomeno Mata in the Veracruz State; and Tuxtla Gutiérrez and San Cristóbal de las Casas in Chiapas State.

4. Mexico faces numerous challenges to ensuring the human rights to safe drinking water and sanitation to all its people, many of whom live in peripheral urban areas and highly dispersed rural communities throughout the country. Many live in regions of high or very high water stress, experience low levels of development, face different socio-environmental conflicts and significant levels of poverty, requiring specific approaches for service provision. Adding to those challenges in recent years has been an economic environment in which government revenues have sharply diminished, in large part due to falling oil prices. Federal budgets for essential services have been significantly reduced, reportedly by over 37 per cent from 2016 to 2017 for the water and sanitation sector. Such cuts will have a potentially dramatic effect on the progressive realization of the human rights to water and sanitation in the short, medium and longer term. That negative impact could be aggravated by the institutional situation of the sector, which was described by one expert as being "on life support" due to its current political, financial and budgetary conditions.

5. The Special Rapporteur recalls that the primary obligation for the realization of all human rights, including the rights to safe drinking water and sanitation, lies with the Government of Mexico, which is expected to use the maximum available resources to meet that end. Representatives of the Government mentioned that the country recognizes the interdependency and indivisibility of all human rights with no order of priority of some human rights over others. However, the Special Rapporteur was concerned to hear from different authorities that the rights to drinking water and sanitation are not among the highest priorities of the Government in the context of its human rights obligations. Civil and political rights issues, including addressing allegations of torture and forced

disappearances, were noted as high priorities of concern to Mexico. While that is vital, he encourages the Government, as required under international human rights law, to give equal and appropriate attention and to provide necessary resources to address critical economic, social and cultural rights, including the human rights to water and sanitation.

6. As States are required to put in place national plans and targets to achieve goals under the 2030 Agenda for Sustainable Development, a key message of that process has been to "leave no one behind". Mexico must ensure as the highest priority that no individuals, families or communities are left without adequate water and sanitation services. To meet its human rights obligations, it is important to highlight that working gradually to realize the human rights to water and to sanitation would in turn help Mexico to achieve the Sustainable Development Goals, particularly, but not exclusively, Goal 6.

II. Legal, institutional and policy frameworks

A. Legal framework

7. Mexico has ratified most of the core international human rights treaties relevant to the human rights to water and sanitation, including the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities, which stipulates the right to an adequate standard of living, including the human rights to water and sanitation. Those rights are explicitly recognized in several resolutions, particularly General Assembly resolutions 64/292 and 70/169, and Human Rights Council resolution 33/10.

8. Article 4 (6) of the Constitution, amended in 2012, explicitly guarantees the rights of all individuals to have access to sufficient, safe, acceptable and affordable water and sanitation services. While the Special Rapporteur commends Mexico for that development, he notes that the Constitutional amendment required the adoption of specific legislation on the subject to be enacted within 360 days. More than five years later, it is regrettable that no such law has yet been adopted and progress on passing a law has stalled. The existing National Water Law of 1992 remains in operation, but does not fully reflect the human rights framework and the Constitutional amendments. The Government should move forward in close consultation and collaboration with all key stakeholders, especially civil society groups, to pass new legislation that is in accordance with the Constitutional provisions. The legislation must assign priority to the interests of citizens, guarantee the normative content of the human rights to water and sanitation and human rights principles, clearly recognize that water for human consumption is a priority among water uses and enable conditions in which those human rights can be put into practice.

9. The Special Rapporteur emphasizes that a revised general law on water and other appropriate legislative provisions would be an important step in ensuring the rights to water and sanitation in practice, creating the legislative environment for concrete policies and programmes to be formulated and implemented and allowing individuals and communities to claim their rights under domestic law. A new law would also be instrumental in helping to ensure an improved and strengthened institutional framework and operational environment with clearly defined roles and responsibilities that better meet the increasing needs of the country. A strong legal framework must be accompanied by an efficient national water and sanitation policy, and comprehensive and participatory planning that leads to a concrete implementation strategy and measures. The Special Rapporteur takes note of several draft laws currently under consideration by the legislative power, but he is concerned that there are very divergent views on the issue in Mexican society and that previous attempts to reach a consensus have been unsuccessful.

B. Institutional framework

10. Under the Constitution (art. 115) and based on a project to decentralize service provision, municipalities are in charge of drinking water, sanitation, drainage, treatment and disposal of wastewater, as well as operating and maintaining infrastructure. Under the

three-tier system of federal, state and municipal government, some states have state water commissions, their own water laws and water governance frameworks, as well as state entities for water and sanitation service provision and regulation. The ultimate responsibility for the provision of water and sanitation falls to municipalities, which can be supported and partially funded by the state and federal governments. Several communities have self-managed water and sanitation services ("sistemas comunitarios de agua"). Numerous civil society organizations and some national authorities expressed concerns about the capacity of some municipal authorities to fulfil their mandate as service providers in the water and sanitation sector and the need to strengthen those services.

11. The National Water Commission (CONAGUA) is a decentralized body of the Ministry of the Environment and Natural Resources. It is a key organization in Mexican water management with an extensive range of responsibilities and functions, including ensuring the security and sustainability of the country's water resources, managing water rights and developing hydrologic infrastructure. The National Water Law defines the role of the National Water Commission in the water and sanitation sector as strengthening and supporting public services for urban and rural water, sewerage and wastewater treatment in the national territory, in coordination with state governments and, through them, with municipalities. While recognizing its important role, including in devising and implementing water policy, various stakeholders are calling for a review of the mandate of the National Water Commission to bring it into line with the Constitution and revised legislation, under which it should support state and municipal authorities in implementing in practice the human rights to water and sanitation.

12. Numerous stakeholders informed the Special Rapporteur that in practice the organization of the water and sanitation sector in Mexico was not functioning effectively to deliver high quality services to the population, due largely to insufficient federal and state support and funding to municipal authorities, as well as fragile and ineffective structures at the municipal level. As an example, the point was highlighted that costly federal and state-funded infrastructure projects, usually conceived in a top-down manner, did not have the required technical and financial support at the municipal level and quickly ceased to function effectively. Necessary resources, technical capacity and monitoring and control of service provision are not among the highest priorities at the three levels of government, yet are essential to ensuring the delivery of the best possible water and sanitation services to all, including the poorest and those in dispersed rural communities.

13. The Special Rapporteur considers that the organization of the water and sanitation sector shows an absence of coordinated efforts and roles between the three levels of government. The federal and state levels do have some responsibilities in setting standards, creating specific legislation and supporting service provision. However, they do not clearly complement or regulate the municipal level in its responsibility to provide water and sanitation services. At the municipal level, it was noted by some authorities that political factors contribute to poor service delivery. Political appointments of individuals are frequently made, giving senior roles in municipal water and sanitation providers to those without the necessary technical qualifications. Furthermore, municipal administrations are elected for three-year terms, resulting in frequent changes of administration and senior officials, which some blamed for inconsistent and poorly implemented policies, projects and programmes. The disconnect between the three levels of government hinders Mexico from achieving the highest attainable levels of services and complying with its obligations to realize the human rights to safe drinking water and sanitation.

14. It is also a matter of concern that, to date, Mexico has no formal regulatory bodies for either private or public providers of water and sanitation services. Comprehensive application of regulatory measures, at the federal, state or municipal level, is key to ensuring an accountable water and sanitation sector. Moreover, such measures are central to supervising and supporting municipalities in fulfilling their responsibilities. Regulatory bodies should be established and should be competent to ensure that those who provide water and sanitation services, whether public, private or others, comply fully with human rights and meet legal obligations and standards.

C. Policy framework

15. A number of strategic national plans relating to human rights, development and the rights to water and sanitation have been drawn up.[1] A prominent national plan in the water and sanitation sector is the National Programme for Water Management 2014-2018, which recognizes the human right to water and includes the objective of strengthening access to drinking water and sanitation services. The needs of rural populations are recognized and the Plan outlines the requirement to guarantee their access to water and sanitation, including through the use of alternative systems. Strategies to attain those goals combine increasing coverage of services, improving efficiency, and coordinating with other relevant programmes and institutions. The Special Rapporteur notes that the right to sanitation is not included with sufficient clarity in the Plan and calls for greater clarity in that regard.

III. Human rights to water and sanitation

A. Availability and accessibility

16. Government officials informed the Special Rapporteur that 94 per cent of the population of Mexico has drinking water coverage, while for sanitaion provision the figure is 93 per cent. Those levels of coverage show that service providers are capable of effectively promoting implementation of the rights to water and sanitation. Nevertheless, it is essential to highlight that those figures, while impressive, reflect only the existence of some form of infrastructure coverage, not the actual extent of access to water and sanitation in people's homes, which is dramatically lower.

1. Water

17. There remain significant sectors of the population in Mexico for whom the provision of safe water is extremely limited or non-existent. While demand is growing, it is estimated that by 2030 in some of the country's hydrological-administrative regions, the per capita renewable water resources will reach levels close to or lower than 1,000 m^3 per inhabitant per year, a condition classified as water scarcity.[2] The central, northern and north-western areas have experienced high degrees of water stress. Federal authorities noted that drought conditions affect large parts of those regions, with 16 states affected by drought. Moreover, 8 of the country's 13 river basins experienced high or very high water stress levels in 2015. The lack of continuous and sufficient access to water is also related to overexploitation of aquifers[3] for reasons including the need to supply water-intensive residential, industrial, agribusiness, touristic, extractive and developmental projects. Civil society organizations noted that that is detrimental to the continuous personal and domestic water supply.

18. Even within Mexico City, the picture of water availability is highly varied, with continuous and reliable water provision unavailable to the majority of the population. The aquifer supplying the city is the most overexploited in the country. That situation is replicated in other parts of the country, with some regions experiencing severe water shortages. For example, in Filomeno Mata in Veracruz State, it is disturbing that the availability of safe drinking water is critical and in need of urgent intervention for the urban community of over 13,000 inhabitants. While piped water and sanitation infrastructure is in place, households receive drinking water for only three hours per month on a rotational basis under a failing water system. Community members stated that sometimes they do not receive piped water for three months. The community is almost entirely reliant on natural

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[1] Such as the National Development Plan 2013-2018 and the National Human Rights Programme 2014-2018.

[2] Mexico, National Water Commission, *Statistics on Water in Mexico, 2016 edition* (Mexico City, Ministry of the Environment and Natural Resources, 2016), p. 182. Available at http://201.116.60.25/publicaciones/EAM_i_2016.pdf.

[3] Of the 653 aquifers, 106 are overexploited. See www.aguas.org.mx/sitio/index.php/panorama-del-agua/diagnosticos-del-agua.

springs, which require them to constantly fill containers for all their water needs. In dry seasons, springs may dry up or community members have to "wait for hours to fill a bucket".

19. In dispersed rural communities, the challenges relating to the availability of safe drinking water and sanitation are often acute. Despite projects to install simplified technology in such communities to pump and purify water and to collect rainwater, for example, there is a minimum requirement of maintenance and service that is not always available, while rainwater harvesting relies on seasonal rainfall. That has left some communities, including the indigenous communities in Chiapas and Mexico State that the Special Rapporteur visited, with severe water availability problems and reliant on potentially hazardous groundwater sources. In some localities a decree of prohibition ("decreto de veda") impedes aquifer exploitation in certain zones where aquifers are depleted and require recharging to supply larger communities. That restricts the drilling of wells in some adjacent rural areas and may be creating inequalities in access to water sources. Besides, the excessive number of concessions that have been approved without previously updating the information on water availability is a serious problem that remains unaddressed.

20. A high proportion of the water systems in the country are operated on a rotational basis under which households receive piped water only on specific and often unpredictable days or at certain times. For users, that means that they need to store water for a long period, which leads to deterioration of the water quality and affects human health. Some regions continue to receive limited or no water and sanitation services. In the face of national budget reductions, the Special Rapporteur expresses concern about the possibility of complacency with regard to service provision, based on official coverage figures that are misleading and may detract from or delay the implementation of essential measures to improve services and access to safe water and sanitation. That is a serious concern, and the Special Rapporteur cautioned that the supposed good performance should not be used as justification for the large reduction in the 2017 budget for water and sanitation.

21. Even in Mexico City, access to water is sporadic and unpredictable. According to the Human Rights Commission of Mexico City, 70 per cent of the population receive water for less than 12 hours per day. The Special Rapporteur visited the communities of Santa María Aztahuacan and Lomas de San Lorenzo in the Iztapalapa borough of Mexico City. The area is the city's most populous, historically an area of high and uncontrolled population growth, and has a high level of socioeconomic marginalization. Despite being connected to the piped water system and having several wells in the area, civil society groups reported that hundreds of thousands of people in the area do not have regular access to water or have very limited and rotating access with no service on some days. There is a widespread view expressed by the community that vast amounts of water under the area are diverted by the authorities to supply other, high usage residential and commercial areas, as well as for megaprojects, including the development of a new airport.

22. Residents of those communities in Iztapalapa expressed fears that an additional well would be drilled to take even more water from the area and said that the authorities had failed to inform or adequately consult with them and had played down their problems, including concerns about cracks in housing due to subsidence. Residents expressed frustration over paying for a poor water service and inadequate sewerage system. One asked where their water was going, given that there were wells in their neighbourhood, but they did not get any water from them. Another complained that a budget for new water pipelines to the neighbourhoods had not been approved, while commercial and development projects had been authorized. Community members raised concerns about the quality of water provision from all the sources they use, including tankers, noting that they do not trust the water and that it contains visible solids, has a foul smell and a dark colour. The Special Rapporteur reminds the Government that the human rights to water and sanitation require that the domestic needs of all individuals, families and communities must be the first consideration and highest priority among the various water uses, as also explicitly required under the National Water Law (art. 22).

23. The Special Rapporteur visited some informal settlements, including the community of San José Obrero in Xochimilco, Mexico City, where residents have to pay unaffordable

prices to transport water by donkey to their hillside homes and to buy bottled water, as they are considered ineligible for full access to water on the basis of the community's lack of legal status. The Special Rapporteur was informed by the authorities that it was difficult to provide water to communities living on hillsides where the elevation creates technical problems. However, civil society demonstrated that wealthy communities in other parts of the city, also living in high elevation areas, experienced few problems with access to piped water and high levels of service provision, showing that inequalities in water supply in the city are linked to wealth, and not to technical concerns. City officials argued that providing water and sanitation services to such locations and populations would legitimize illegal settlement or occupation of lands.

24. Equally, in Tuxtla Gutiérrez, in Chiapas State, the residential community of Real del Bosque has not been granted full legal status, which has serious implications in terms of access to water for over 8,000 households. An unregulated informal service provider operates the services and the community reported serious complaints to the Special Rapporteur about access to water, the quality of the services, their price and systematic and indiscriminate disconnections. The Special Rapporteur recalls that the human rights to water and sanitation must be respected, protected and fulfilled for all in society, irrespective of their social and economic conditions and their housing situation. Efforts should be made to formalize informal settlements and extend water and sanitation services to such locations.

2. Sanitation

25. The national provision of sanitation services, particularly for urban and rural areas not connected to sewerage systems, is a cause for concern and must not be neglected. The human right to sanitation does not necessarily require collective solutions, but establishes governments' obligations to support individual solutions to meet the proper sanitary, health and environmental requirements. In some localities visited, the sanitation system was extremely basic or non-existent, poorly functioning or had ceased to function entirely with consequences including untreated wastewater discharged directly into local streams and rivers that are water sources for communities downstream. In Filomeno Mata, San José del Rincón and Tuxtla Gutiérrez, the Special Rapporteur witnessed expensive wastewater treatment plants that are not operational due to lack of maintenance, collapsed sewerage lines and insufficient funds.

26. While the sanitation sector benefited from exceptionally high investment in 2012 (17.6 billion pesos), it has since received decreasing funds (5.6 billion pesos in 2015) and state and municipal authorities and civil society expressed concerns regarding the potential for further erosion of services or failure to expand or maintain essential sanitation infrastructure. The Special Rapporteur visited San Cristóbal de las Casas, which has over 200,000 inhabitants, and witnessed a large flow of untreated wastewater flowing downstream, inevitably contaminating water sources and resulting in serious health problems.

3. Public institutions

27. The Special Rapporteur was particularly concerned to learn that many schools in Mexico lack adequate drinking water and sanitation facilities. Mexico has 206,155 public schools, of which 42,617 obtain water from either a water well or a tanker truck, and 6,489 schools lack access to water. The quality of water when available is not guaranteed. For instance, the Special Rapporteur met protesters outside one public school in Real del Bosque who complained about the lack of water provision to the school, which was reportedly available only once every 12 days, requiring the parents' association to pay several thousand pesos per month for water tankers, thus diminishing the resources available for other school needs or activities. Despite the costs they incur, they complained that there are no water fountains, toilet facilities are inadequate and school meals are prepared with contaminated water. In many schools, toilets do not function properly due to the lack of water to flush away waste. In Mexico City, over 120 preschool, primary and secondary public schools have to obtain water from sources other than the public water network.

28. In May 2014, the Government approved an initiative to bring drinking water, via water fountains, to all public schools. While that is a very welcome development, progress in implementation has reportedly been slow and should be stepped up, particularly in states with the highest levels of poverty and marginalization. Challenges were identified, including the need to connect schools to municipal networks where possible or, for those schools in more remote locations or where no water system is available, to identify and establish alternative solutions, such as rainwater harvesting. The need to ensure technical maintenance at the local level was also identified as an ongoing challenge that would also benefit from the social participation of communities in monitoring the system and its operation. According to the Ministry of Public Education, the first phase of the project has been completed, with more than 6,000 water drinking systems installed out of a total target of 11,034 for 2016/17.

B. Quality

29. The Ministry of Health has overall responsibility for surveillance of the quality of drinking water and is required to set standards for drinking water quality, to which providers should conform, while state law may contain further obligations and requirements. The Federal Commission for Protection Against Sanitation Risks is a regulatory body and a decentralized organ of the Ministry of Health responsible for regulating a variety of health-related areas, including drinking water quality. The National Water Commission also has a role in ensuring the quality of water resources under the National Water Law and provides funds to states and municipalities to improve the quality and availability of water supply. It also has a monitoring role in collaboration with other state and municipal authorities to ensure compliance with federal quality standards, but that role is more focused on the quality of water sources, and not on drinking water.

30. The current standard for drinking water quality in Mexico (NOM-127-SSA1-1994) is very outdated. A revision of that standard in 2000 did not introduce any substantial changes to it. In 2011, the World Health Organization published the fourth edition of its guidelines on drinking water quality and numerous addenda and recommendations for specific contaminants. Those updated scientific developments resulted in a number of new parameters and more stringent standards for water quality. Considering those developments and the complex situation in Mexico with regard to diverse environmental impacts on its water sources, mainly due to industrial effluents, agriculture, mining and hydrocarbon projects, the current norm must be urgently updated to provide more adequate and health-oriented surveillance and monitoring of drinking water quality. The Special Rapporteur learned that a commission was established for that purpose and urges the Government to speed up the process of updating the norm, in a rigorous, open and participatory way.

31. Numerous community representatives and non-governmental organizations raised concerns relating to the quality of water supplied, while officials admitted that water quality varies greatly and it is frequently not suitable for drinking. They reported frustration over insufficient responses from authorities when they raised concerns or sought testing of water samples and assurances over water quality. The Special Rapporteur was informed that there is no quality surveillance of informal water providers by the Ministry of Health, which is a cause for concern in view of the prevalence of such providers in Mexico to supplement insufficient public services.

32. In several communities that the Special Rapporteur visited, inhabitants noted their reliance on bottled water for drinking due to concerns about quality, which adds a considerable extra financial burden for those who are often living in the poorest areas and with the lowest incomes. The fact that Mexico has the highest per capita consumption of bottled water in the world (480 litres per year) is an indication of the distrust of the Mexican population in water utilities. Dependence on bottled water is definitely not a way to meet the country's obligations relating to the right to water, as it undermines the necessary accessibility and affordability of water provision. Some concerns were also raised by community members regarding the quality of bottled water, with some calling for stricter regulation of the sector.

33. Mexico is also one of the largest consumers of soft drinks in the world. Academics and members of non-governmental organizations reported to the Special Rapporteur that that is also a result of the distrust regarding the quality of drinking water, including in schools, which has enabled soft drinks companies to exploit the situation and led to worryingly high levels of childhood obesity. In a positive step, in 2014, a soda tax was created, with the authorities undertaking to use revenues to support the implementation of drinking water fountains in public schools, a step that is also supported by the national General Act on Education Infrastructure. The Special Rapporteur encourages the Government to ensure continuous implementation of that programme.

34. The Special Rapporteur was informed about numerous cases relating to contamination and pollution of water sources due to factors such as mining and industrial projects, hydroelectric power and hydrocarbon extraction, including the use of fracking in some States such as Veracruz, Puebla, Coahuila, Nuevo León and Tamaulipas, as well as indiscriminate and uncontrolled use of pesticides. It was reported that, in numerous cases, those environmental issues directly or indirectly affected water sources, raising concerns about drinking water quality and health protection in affected areas, considering that various contaminants are not adequately removed by water treatment plants and that in some cases, water is directly consumed from the sources. For example, in locations where piped water offers only sporadic and unreliable supply, communities are heavily reliant on local rivers, springs, creeks and wells for their water consumption. Local communities in areas affected by contamination of water sources expressed their frustration that their complaints go unanswered, that they are not properly consulted prior to the project design and implementation and that their right to water seems to be a low priority for the relevant authorities and private bodies. One indigenous representative stated that "the sources from which we take our water are the same as those used by the hydrocarbon companies. We feel that the water is sick and we are becoming sick too, because the water is sick".

35. The Special Rapporteur heard reports that the poor quality of drinking water and lack of adequate sanitation and wastewater treatment was negatively affecting individuals' health. Residents frequently noted that their concerns were ignored and that there was a lack of accountability of service providers. Civil society called for strengthening of the monitoring and regulatory frameworks to rapidly address such issues and provide appropriate responses to concerned communities. There must be recognition of the impact of economic activities on water and the potential and actual harm caused to local people who may have no choice other than to use contaminated water sources. Prompt action to address that situation is necessary. It needs to be emphasized that public and private companies have the responsibility to respect the human rights to water and sanitation and to take due diligence measures to avoid and reduce any negative impact on those rights. Additionally, the Government's systematic monitoring of the level of specific contaminants in piped water is an urgent issue.

36. In remote indigenous communities in Chiapas (see para. 51 below), which are heavily reliant on local surface-water sources, some residents noted that they and their children had experienced health problems, including diarrhoea, vomiting and headaches, and were concerned that the water quality might be the cause. Without adequate piped and purified water provision, they rely on a lagoon where animals use the same source and defecate close to the water. Even in larger urban settings such as Real del Bosque in Tuxtla Gutiérrez, the Special Rapporteur was informed that the wastewater treatment plant was not functioning and that large quantities of wastewater flowed from the more than 8,000 households into local creeks near to homes. Residents complained that they suffered from increasing incidents of illness, dermatosis and eye infections, which they attributed to the exposure to wastewater, while their complaints received no positive response from the service provider or municipality.

37. The Special Rapporteur notes that a number of measures are necessary when applying the human rights lens to the issue of water quality. Strengthening the control of water quality by providers, combined with a more comprehensive surveillance of water quality, will ensure a more reliable picture of the risks associated with water consumption in each community and city. Additionally, the right to information must be ensured by authorities and water providers, giving systematic information to users on the quality of the

water they consume, irrespective of individual requests or complaints made. National guidance on that issue would be most welcome.

C. Affordability

38. Affordable services are essential to guaranteeing the rights to water and sanitation, especially for those living in poverty. From the total population of 121 million people in Mexico, some 53.3 million live in poverty, with 11.4 million living in extreme poverty. Tariffs for water and sanitation are usually set by each municipality, based on state legislation and local circumstances and therefore tariffs often differ substantially according to locality. A classification system based on socioeconomic status, through a vulnerability index, is used by some providers to establish their tariff systems and cross-subsidies.[6] In Mexico City, for example, the service provider uses a dynamic geostatistical model, the "development index", to calculate the development level of every city block based on social and economic indicators. Such systems potentially protect those living in the most vulnerable situations against unaffordable bills, if properly implemented.

39. In many of the communities the Special Rapporteur visited, residents expressed their concerns regarding high or unaffordable bills for poor services that do not meet their needs. Mexico has in place mechanisms to receive complaints in that regard, such as the Federal Consumer Protection Agency, but the actual number of cases relating to water prices is very limited. While the financial sustainability of the water and sanitation system is essential and relies on an appropriate system of water tariffs, it is nevertheless imperative to ensure that services are fully maintained to those with the lowest incomes or living in poverty. The Special Rapporteur ascertained that those who receive no service or poor service by their providers are those who experience the highest economic and social impact, since they are compelled to rely on expensive alternative or supplementary ways of accessing water, such as bottled water, water trucks and informal providers. That means that the poorest often pay more for their water and expend more time and energy obtaining it.

40. Some of those interviewed noted that a significant proportion of their disposable income is taken up by water bills and supplementary costs for bottled water or water from tankers required to meet family needs. In some of the localities he visited, the Special Rapporteur was informed that households that pay water rates for water from the public utility pay several times that amount more each month for bottled water or tanker delivery. Some people informed the Special Rapporteur that they had incurred considerable debts due to their inability to pay water rates. In some locations, additional costs were incurred to transport water from tankers or other water sources to their homes, for example in San José Oberos in Xochimilco, where residents pay to have water jugs delivered by donkey to their hillside homes. Residents in Iztapalapa complained that, in addition to water rates, they rely on water tankers to fill containers in their homes, reportedly costing residents 300–800 pesos each time, when the official minimum wage is 80.04 pesos per day. Some people complained about a lack of clarity on their water bills relating to rates and other fixed costs or charges.

41. The Special Rapporteur was informed that services have been cut in the case of failure to pay water bills. Although there are provisions in the Constitution and decisions of federal courts prohibiting that practice, there is no definitive legal safeguard impeding disconnection due to the lack of economic capacity to pay. The situation differs from state to state based on local laws. In Mexico City, the Special Rapporteur was informed that non-payment resulted in only a decrease in the volume supplied or in water pressure. In Tuxtla Gutiérrez, Chiapas, families reported that their services had been cut due to non-payment. Disconnection of service on the grounds of economic incapacity is a retrogressive measure and is a violation of the human rights to water and sanitation. The revised national legislation on water and sanitation services must include a provision clearly prohibiting the disconnection of users who are economically unable to pay their bills for those services.

[6] Usually, commercial and industrial users are charged with higher tariffs, subsidizing residential users.

42. In Tuxtla Gutiérrez, the Special Rapporteur met with community members of the residential borough of Real del Bosque, who complained about infrequent water supply, the poor quality of water, and services being cut off due to non-payment for many, even those struggling on low incomes and some people with chronic health conditions. One woman said that she had accumulated a large debt due to water bills and her service was cut off and her appeals to the service provider rejected, despite the fact that she is suffering from cancer. Residents called for accountability for service provision to be urgently addressed and for the municipal water provider (Sistema Municipal de Agua Potable y Alcantarillado) to take over the provision of services from a private body that had been created and that they considered to be overcharging and failing them. One resident stated that "people from water tank trucks tell us that they take water from our own wells to sell back to us". The provider explained that the problems stemmed from water shortages, which caused wells to dry out, and from a lack of government support and the politicization of the issue by some parties and complainants. Despite being one of the largest residential neighbourhoods in the city, the legal status of Real del Bosque has not been settled, due to fraud, and houses were sold without having the correct entitlements to services and utility supply, which is not acceptable under human rights law.

D. Sustainability

43. The Special Rapporteur encountered many cases of costly infrastructure projects for water provision, sewerage and wastewater treatment that had been implemented by the federal and state authorities, but had quickly ceased to function due to a lack of maintenance and skilled operation, as well as the high energy and maintenance costs required.

44. For example, he was alarmed to learn that out of 198 wastewater treatment plants in Chiapas State, only a very low proportion were functioning,[3] resulting in a major problem of contamination of water sources. In Ciudad Real, an expensive wastewater treatment plant that was installed has, according to the local authorities, functioned for one month only due to blockages and a lack of maintenance and capacity to repair the influent pipeline. These failures result in wastewater flowing directly from the town into the local river downstream, which is a source of water for other communities in the water basin. No adequate solution is in sight for the residents and the local authorities expressed their frustration, highlighting their lack of capacity to address the issue due to their lack of financial resources and technical capacity and poor support from the state and federal governments.

IV. Population groups requiring special attention

A. People living in dispersed rural areas

45. Providing safe water and sanitation solutions to highly dispersed rural communities presents specific challenges that are not being adequately addressed in practice in Mexico. In some locations, the Special Rapporteur witnessed small-scale community-managed water and sanitation systems, built through a national programme managed by the National Water Commission for implementing rainwater harvesting and "ecotechnologies" for rural communities. While they are positive practices, these systems should receive improved support and funds from different levels of governments to ensure their expansion and effective functioning in practice. Regrettably, the Special Rapporteur also witnessed examples of cases in which such systems are poorly supported and consequently they cease to function properly, leaving communities to return to potentially unsafe water sources and poor sanitation practices.

[3] Twelve (6 per cent) according to the Chiapas State authorities and 35 (18 per cent) according to the National Water Commission.

66. The Special Rapporteur visited water and sanitation projects in San José del Rincón, which provide an intervention model for dispersed rural communities, including small-scale pumping, filtration and treatment systems, rainwater harvesting and dry latrines. Beneficiaries are categorized as being partly or highly marginalized where water and sanitation provision has been highly problematic and where communities frequently rely on artisanal wells and defecate in the open, often close to water sources. In some communities, a water supply network exists but is not sufficient or not functioning. Some communities had stopped paying bills and were in debt. In one community the Special Rapporteur visited, 98 per cent of the residents had lost access to water.

67. One project also includes education and awareness-raising to improve local management of services, as well as awareness-raising about poor hygiene behaviour. Community committees are created to manage the water systems, in accordance with local cultural practices. Leaders noted that some community members still do not pay, for cultural and economic reasons. Part of the population had been excluded from the project due to budget constraints and those left behind were dubious about the criteria that had been used to select beneficiaries. Such pilot projects provide valuable and relatively inexpensive solutions and can constitute an important learning process. However concerns relating to universal access, level of services and especially sustainability need to be addressed by the federal Government and its state and municipal counterparts.

B. Indigenous peoples

68. A high percentage of indigenous people in Mexico are marginalized and live in poverty in highly dispersed rural communities. It was evident that indigenous peoples also frequently face some of the most severe challenges relating to the provision of water and sanitation. They have unique cultures, customs, practices and leadership structures, including with regard to their relationship with water and waste, which must be considered and respected in policies, programmes and service provision. In some cases, the Special Rapporteur was informed that solutions for access to water proposed by the authorities were not appropriate for indigenous people for various reasons, including the digging of wells on their lands or provision of pipelines, and they reported unsatisfactory consultation or ability to participate prior to the conception of projects, according to national and international law and standards. Some indigenous representatives reported that their communities felt neglected.

69. The information and cases received also highlight the fact that water sources used by many indigenous communities have been particularly affected by infrastructure, industrial, extractive, tourist or agricultural projects, especially regarding the availability and quality of water.

70. The Government must ensure equality of access for all communities without discrimination. The National Commission for the Development of Indigenous Peoples highlighted the existence of the Indigenous Infrastructure Programme to deal with shortcomings in remote communities and projects, which has provided them with drainage, clean water, electricity, shelter and other basic services. Over 21 billion pesos have been invested in infrastructure projects for indigenous peoples. Technical and infrastructure projects seek to implement sustainable options to provide water to communities with fewer than 15,000 inhabitants belonging to groups that are very or extremely marginalized. The rights of indigenous peoples are enshrined in the Constitution and federal and state legislation, including their rights to participate and to be consulted on federal programmes that directly affect the development of their peoples and communities.[6] Some states, including Mexico State, have strong legal provisions relating to indigenous rights to land and to the preferential beneficiaries in the exploitation of natural resources that must be agreed with the community.[7]

[6] Federal Planning Law, art. 20.

[7] Mexico State Law on Indigenous Peoples' Rights, art. 52.

51. While welcoming programmes for indigenous communities to improve their access to water and sanitation, the Special Rapporteur found that in practice, numerous challenges remain to be addressed, including measures to better support community-managed systems. The challenges for local authorities relating to water shortages and provision of services to remote and dispersed rural communities in many municipalities are evident. In the communities of Manzanillo I and II, in Chiapas State, the Special Rapporteur was shown infrastructure projects including water pumping and filtration systems to pump and clean water from a local lagoon to a tank located at the community school, and rainwater collection reservoirs that allow rainwater to be harvested and chlorinated for use by the community. With relatively high rainfall in the region, he was told that the reservoirs provided an additional water source for three or four months each year for the community of some 500 inhabitants. While the Special Rapporteur acknowledged the efforts to provide infrastructure to the community, the sustainability and maintenance of such rural water and sanitation systems must be improved.

52. Community members and civil society representatives supporting them informed the Special Rapporteur that the pumping system had ceased to function effectively after a short period of operation. The lagoon had dried up at one time, and the indigenous people stated that they feared that they had "angered the lagoon" by pumping water out of it. Community members requested piped water from an alternative source other than the lagoon. Since the reservoir functioned in rainy seasons only, the community quickly returned to taking water directly from the lagoon, collecting the muddy brown water in plastic containers to be carried to their homes by donkey. In those communities, the Special Rapporteur was concerned that the quality of the available water was clearly unacceptable and potentially a threat to the health of community members.

53. The community members noted that they had tried to raise their concerns with the authorities, but that they felt that there was discrimination against them as poor and indigenous peoples. The situation and challenges experienced by the communities was reportedly replicated in thousands of other similar communities in Chiapas State.

C. Women and girls

54. The mandate of the National Institute for Women includes examining ways to improve women's access to water and sanitation, such as through the gathering of data and statistics and improving women's participation in public policies and local decision-making. The representatives of the National Institute noted initiatives and programmes to empower rural women, promote equality in access to services including water and sanitation, and its efforts to ensure that gender perspectives were appropriately included in the National Development Plan. The National Programme for Equal Opportunities and Non-Discrimination against Women 2013-2018 is identified under goal 3 (strengthen water supply and access to drinking water, sanitation and sewerage services) of the National Water Plan 2014-2018 as a cross-cutting line of action. However, the Special Rapporteur expressed his concern that limited access to and availability of water and sanitation in Mexico has a disproportionately negative impact on women and girls. In that regard, he urges the Government to consider the recommendations contained in his report on gender equality in the realization of the human rights to water and sanitation (see A/HRC/33/49).

55. In locations with poor or no water and sanitation infrastructure, members of local communities have to collect and carry water to their homes from local springs or other water sources. Significant time is spent by households engaged in securing alternative sources of water such as bottled water and tanker deliveries. The National Institute stated that a survey conducted every five years had found that in 2014, some 10.5 million persons were engaged in carrying water for an average of 2.5 hours per week. In some locations, such as Filomeno Mata in Veracruz State, that is an almost full-time occupation for many family members, mostly women and girls. Some families reported that they must carry water themselves, often without vehicles, having to make a 30 to 40-minute trip to queue for water from roadside springs five or six times a day. In indigenous communities visited in Chiapas, the same issue was encountered, with women reporting that they spend a large part of their day collecting and transporting water. That limits their ability to engage in

other economic activities, and some of them also reported that it has a negative impact on their health.

D. Other vulnerable groups

56. The Special Rapporteur sought information regarding the provision of water and sanitation facilities for homeless persons, including in large urban centres such as Mexico City. While he was not able to ascertain the situation regarding government provision of services, he urges all relevant authorities to put in place measures to ensure that homeless persons have free access to safe drinking water, as well as to adequate toilets and bathing facilities. It was brought to his attention that some families faced financial challenges due to issues such as the forced disappearance of family members or internal displacement due to violence, which affects their capacity to pay for their water and sanitation services. Provisions are necessary to ensure that social tariffs are applicable in such cases.

V. Information, participation and accountability

57. In all communities that the Special Rapporteur visited he was told that information provision relating to water and sanitation services and meaningful consultation and participation in decision-making processes were generally inadequate and in many cases non-existent. Civil society representatives stated that the National Water Commission frequently refuses to provide information about water, allegedly referring to security concerns based on the National Water Law, and has no adequate participatory space for decision-making.

58. Non-governmental organizations indicated that there is a lack of transparency regarding the quality of water administered through public supply networks and in water sources, many of which are used directly without treatment. In zones hosting extractive industries (oil and shale gas extraction in Emiliano Zapata, Papantla, Veracruz State), contamination of water supply sources, owing to accidents or degraded supply networks, is apparently recurrent. Nevertheless, there is a lack of information from public authorities indicating to users that water quality may be compromised, when according to other evaluations that is evidently the case. That lack of information may constitute negligence on the part of the public authorities, or a deliberate attempt to avoid public awareness about the problem. Some community sources reported being unaware of shale gas extraction operations being conducted in their localities until they became aware of water contamination issues, noting that they had never been informed or consulted about such activities.

59. Mexico has not yet ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which would allow communications (complaints) to be submitted to the Committee on Economic, Social and Cultural Rights by or on behalf of individuals or groups of individuals who claim to be victims of a violation of any of the economic, social and cultural rights set forth in the Covenant. Officials noted that they were monitoring progress on the ratification of the Optional Protocol and also considering it in the context of the Government's other human rights priorities. The Special Rapporteur emphasizes that it is crucial that national legislation provides a clear guarantee to individuals and groups who are alleged victims of violation of their rights to water and sanitation, so that they are able to file complaints before a judicial body, request legal remedies and have those remedies enforced. He urges the Government to show leadership in ratifying the Optional Protocol without further delay as an important step to fulfil its international human rights commitments.

60. A considerable amount of information and cases reported to the Special Rapporteur indicate significant obstacles relating to access to justice on the rights to water and sanitation. Many individuals, especially those in vulnerable situations, do not have a clear understanding of their rights, proper legal advice, or resources to access judicial mechanisms. Furthermore, they do not trust the authorities, as so many cases of violations of the human rights to water and sanitation do not reach tribunals, and substantive

jurisprudence on those rights has been limited in comparison with other rights. Attention must be paid to strengthening responses in terms of follow-up to rulings and the provision of remedies in such cases.

61. While numerous community representatives noted that they had pursued complaints by addressing the relevant bodies, including the National Human Rights Commission, and some recommendations have been made relating to water and sanitation by human rights institutions, it was evident that such complaint processes are currently insufficient to achieve rapid and effective solutions for affected communities, if at all. The focus of human rights bodies and judicial mechanisms seems to be on civil and political human rights issues and it was evident that they are poorly equipped or reluctant to make judgments on economic and social rights, including the rights to water and sanitation. While some notable cases have been brought before the courts, progress must be improved on ensuring justiciability of such human rights in practice.

62. The Special Rapporteur is concerned that several community representatives, human rights defenders and civil society organizations informed him that they or others had experienced harassment, intimidation, threats or even arrest due to their complaints or protests relating to access to water and the contamination of water sources. They expressed the fear that they were being criminalized for exercising their right to protest, to defend their human rights and to openly express their concerns. The Special Rapporteur is alarmed by such reports and urges all relevant authorities to guarantee the rights of all individuals to raise their concerns and to freely express their opinions without fear of reprisals. Where complaints are brought to the authorities regarding any unlawful act against them, including unlawful arrest and detention, such cases should be fully investigated and the corresponding protection measures should be considered and implemented.

VI. Conclusions and recommendations

63. **The Special Rapporteur acknowledges the efforts of the Government of Mexico and the positive progress that has been made in the provision of water and sanitation services. The Government has made significant efforts to achieve adequate levels of water supply and sanitation, including by ensuring that infrastructure coverage is widespread in the country. Institutions are working hard to deliver services, and numerous officials and municipal and community-based actors demonstrated their dedication to operate and improve services to the best of their ability and resources, often in difficult circumstances. Mexico must be commended for revising its Constitution to incorporate the human rights to water and sanitation, which provides a valuable Constitutional foundation upon which to build. It is now time to fulfil the promise of the Constitution and transform those obligations into real enjoyment of those rights by all the Mexican population, overcoming several challenges the Special Rapporteur observed during his visit.**

64. **Despite the positive developments, budget allocation and investment in water and sanitation has been falling dramatically. It is essential to ensure that municipal service delivery to communities fully matches the national obligation and commitment to provide safe water and sanitation, which is not frequently the case currently. The primary obligation for the realization of all human rights, including the rights to water and sanitation, lies with the Government of Mexico, which is expected to use the maximum available resources to meet that end, with the highest priority given to service provision for domestic use. The Government must continue to strive to overcome the barriers to achieving universal access to the highest attainable standard of water and sanitation provision for all individuals.**

65. **The Special Rapporteur considers that the Government should give higher priority to the progressive realization of the rights to water and sanitation, as required under its international obligations as a State party to the International Covenant on Economic, Social and Cultural Rights. The adoption of a general law on water and *other appropriate legislative provisions, with proper participation and consultation* processes open to Mexican society, will be *an important and* necessary step to**

ensuring the rights to water and sanitation in practice, creating the legislative environment for concrete policies and programmes to be formulated and implemented, and allowing individuals and communities to claim their rights under domestic law. That would constitute an important and timely expression of the Government's commitment to progress in implementing the rights to water and sanitation. While some notable complaints and cases relating to water and sanitation and environmental concerns have been brought before the courts, progress is required to ensure the justiciability of economic and social rights, with decisions implemented in practice. The adoption of a new law would be beneficial in that regard.

66. The framework of the human rights to water and sanitation requires that the most basic needs for personal and domestic uses should be recognized and put first in all parts of the country. The poor and marginalized must be the highest priority. The consequence of not reaching everyone is that the poor and marginalized are left behind. Innovative solutions have been found or are under development and should be expanded, including through cooperation with other countries experiencing similar challenges. Necessary resources, technical capacity and monitoring and control of service provision must all be among the highest priorities at every level of governance to ensure delivery of the best possible water and sanitation services to all, including the poorest and those in dispersed rural communities that are difficult to reach with infrastructure networks. There must be recognition of the impact of economic and development activities on water and the potential and actual harm caused to local people who may have no choice other than to use contaminated water sources. Prompt action to address that situation is necessary.

67. Numerous other cases of concern from various regions in Mexico were brought to the attention of the Special Rapporteur by civil society organizations and community representatives during his visit. They demonstrate the extent of the challenges facing Mexico in the field of the human rights to water and sanitation and worrying patterns of violations across the country. While he cannot address all those issues in the present report, he will be studying further the information provided to consider any additional action that may be appropriate.

68. In that connection, the Special Rapporteur recommends that Mexico:

(a) Enact without undue delay and in full collaboration with all relevant stakeholders, taking into account their views and concerns, revised general legislation on water, giving full effect and meaning to the human rights to water and sanitation as established in international law and the Constitution of Mexico;

(b) Review the decentralized, three-tier water and sanitation management system with a view to strengthening state and federal support and funding to municipal level service providers who are currently struggling to meet their obligations under article 115 of the Constitution;

(c) Progressively realize the human rights to water and sanitation using the maximum available resources and guarantee funding and resources for water and sanitation at the levels required to fulfil legal, policy and programme commitments and to extend and improve water and sanitation service provision to poorly served or unserved regions or communities;

(d) Establish formal regulatory entities for both private and public providers that are empowered to ensure that providers comply fully with human rights and meet legal obligation and standards;

(e) Establish rapid intervention mechanisms requiring State or federal action to address situations in which water and sanitation systems are failing at the municipal level, including with regard to urgent technical support and assistance, emergency funding, ongoing support and training to ensure the delivery of the best possible services;

(f) Take all possible measures to ensure universal access to water and sanitation for marginalized populations living in the most vulnerable circumstances,

including indigenous peoples, rural populations, the homeless and those in poorly served peripheral urban areas;

(g) Urgently update the quality standard for drinking water in line with World Health Organization guidelines and recommendations for drinking water quality and provide more stringent and health-oriented surveillance and monitoring of drinking water quality;

(h) Ensure that social tariffs for services are applied to ensure the provision of affordable water and sanitation to all, including the poorest and most marginalized in society, and families whose circumstances leave them highly vulnerable, such as those affected by forced disappearance;

(i) Establish legal provisions prohibiting the disconnection of users who are economically unable to pay their bills for those services;

(j) Provide improved support and funds to community-managed water and sanitation systems from different levels of governments to ensure their expansion and effective operation;

(k) Enhance measures to ensure equal access to water and sanitation for women and girls, particularly in peripheral urban and dispersed rural locations, and to eliminate the impact that water collection and carrying and domestic water and sanitation roles have on women's ability to engage in work and on girls' access to education;

(l) Remove restrictions limiting or banning the delivery of water and sanitation services to illegal or informal settlements, with a view to enabling the inhabitants of those settlements to fully enjoy their rights to access those services without discrimination;

(m) Improve access to water, sanitation and hygiene in all educational establishments in both rural and urban areas by rapidly implementing policies to provide toilets and drinking water points, prioritizing states and communities with higher levels of poverty and marginalization. Furthermore, ensure that legal provision for water and sanitation in schools, health institutions, prisons and other public institutions is included in law;

(n) Take measures to ensure that water and sanitation services for indigenous peoples are accessible, affordable and acceptable to them and appropriate for their unique cultural traditions, beliefs and traditional community land and water management systems;

(o) Conduct urgent and independent investigations into the environmental and health impacts of development projects, industrial and commercial activities and the extensive use of pesticides, with a focus on contamination or overuse of water sources, particularly where such water sources are used to supply one or more communities. Moreover, systematic monitoring of the level of specific contaminants in piped water is an urgent issue;

(p) Improve and strengthen the implementation of the regulatory and policy framework on access to information, participation and prior, free and informed consultation to ensure that communities, including indigenous and dispersed rural communities, are properly informed, involved in planning, implementation and follow-up processes, and able to raise their concerns with the appropriate authorities and receive rapid responses and resolution of their problems;

(q) Strengthen access to remedies for violations of the rights to water and sanitation, including measures to prevent repetition, for all affected persons through judicial mechanisms and non-judicial grievance procedures that are accessible, transparent and accountable. In that regard, ensure that information on such mechanisms is readily available to all and where necessary, that legal or other assistance is provided;

(r) Ensure the rights of all individuals and groups to freely protest over issues relating to their rights to water and sanitation without fear of harassment or arrest, and guarantee their safety and protection in law and in practice;

(s) Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, allowing complaints to be submitted to the Committee on Economic, Social and Cultural Rights by or on behalf of individuals or groups of individuals under the jurisdiction of Mexico who claim to be victims of a violation of the human rights to water and sanitation.

69. **The Special Rapporteur recommends that the Governments of Mexico and neighbouring countries enhance existing cooperative relationships in the area of water and sanitation, including by sharing good practice and technical assistance.**